

Statutory “Fix” to Court of Appeals’ Interpretation of Mechanic’s Lien Statute

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In late 2019, the Georgia Court of Appeals issued a decision in *ALA Construction Services, LLC v. Controlled Access, Inc.*, 351 Ga. App. 841 (2019), holding that an executed lien waiver released not only waived a claimant’s lien and bond rights, but also the claimant’s rights to a breach of contract action. The Court of Appeals looked at the language of the mechanic’s lien statute and the statutory lien waiver language provided for therein. The statutory language expressly stated that the lien waiver and release was “binding against the claimant for all purposes” and the waiver language stated that the lien claimant was “conclusively deemed to have been paid in full the amount stated.”

The court determined that the statutory language was unambiguous and not subject to judicial construction or interpretation. Because a signed lien waiver effectively waives claims unless the claimant files an Affidavit of Nonpayment within a certain period after executing the waiver, the court’s decision had the potential to bar a lien claimant from any recovery for the amounts claimed, even under a common law breach of contract theory.

Luckily the Georgia Senate issued a quick fix with SB 315, which was subsequently passed by the General Assembly and signed into law by Governor Kemp on August 5, 2020. The new law, effective January 1, 2021, amended O.C.G.A. § 44-14-366(a) to state “[w]aivers and releases provided for under this Code section shall be limited to waivers and releases of lien and labor or material bond rights and shall not be deemed to affect any other rights or remedies of the claimant.” *Id.*

The law also changed the statutory form of Interim and Final Lien Waivers which are no longer required to be in boldface capital letters. O.C.G.A. § 44-14-366(d). The statutory lien waiver forms now read that a lien claimant “shall be conclusively deemed to have waived and released any and all liens and claims of liens upon the foregoing described property and any rights regarding labor or material bond regarding said property to the extent (and only to the extent) set forth above” The previous version of the waiver forms read that the lien claimant “shall be conclusively deemed to have been paid in full the amount stated” which the Court of Appeals read to bar a cause of action for breach of contract.

Similarly, the law replaced language that a lien waiver is binding for all purposes with language that the lien waiver is “binding against the claimant for purposes of the waiver of lien and labor or material bond rights to the extent stated in the waiver and release.” O.C.G.A. § 44-14-366(g)(1). These changes clarified and restored the law to how it was understood by construction professionals for decades: that a lien waiver *only* waives lien and bond claims.

Finally, the law now gives lien claimants 90 days (as opposed to the previous 60) from the date a lien waiver is executed to file an Affidavit of Nonpayment, which no longer needs to be in boldface capital letters, to invalidate the waiver. O.C.G.A. § 44-14-366(g)(2).

The specific revisions made by the General Assembly can be viewed at the following link:
<http://www.legis.ga.gov/Legislation/en-US/display/20192020/SB/315>

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