

Contracts, Liens and Notice



The Virginia Circuit Courts made a couple of interesting rulings published this month that I thought you should know about. They both emphasize the need to carefully read and analyze statutes and contracts.

The first, [Meeks Disposal Corp. v. Circle South, LLC](#), comes from the Norfolk Virginia Circuit Court and discusses one of Construction Law

Musings' favorite topics, mechanic's liens. In [Circle South](#), Meeks Disposal filed a mechanic's lien memorandum and sent proper notice to Circle South. This one seems easy, right? Wrong.

The twist here is that the Norfolk clerk's office did not *record* the lien at the time it was filed. Because the Virginia mechanic's lien statute requires such recordation, Circle South moved for summary judgment arguing that the lien was invalid. The Norfolk court disagreed in part and denied the motion for summary judgment. The Court stated that the lien was perfected as to the defendant, Circle South, though not to the "whole world" because Circle South had notice. However, the lien was not perfected as to the entire world because without recording no other party aside from Circle South could be deemed to have notice.

In short, the court refused to punish Meeks Disposal (a party that had properly performed its statutory duty) for the failure of the clerk in performing his or her duties under the mechanic's lien statute. For once the Courts used some reason in determining a mechanic's lien case and did not merely read the plain language of the statute and apply it by wrote.

The second case emphasizes the power of contractual language and the weight that Virginia courts will give to the language used in written construction contracts.

In [L. White and Company, Inc. v. Culpeper Memorial Hospital, Inc.](#), the Culpeper, Virginia Circuit Court dismissed a claim by the contractor because the contractor did not follow the notice provisions of the AIA General Conditions for the project. These conditions required that, prior to litigation, any claim relating to the contract had to be submitted to the architect for review. Because the contractor did not take this simple step, its case was dismissed.

n.b. The case was dismissed with leave to re-file so where this case will end up is still up in the air.

The takeaway from both of these cases is that courts will look at statutes and contracts, and enforce them. Be sure to get the advice of an experienced [construction attorney](#) before entering into contracts with which you are unfamiliar or taking legal action relative to a mechanic's lien or construction contract.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.