

Reminder: Not Everything is Lienable



We have discussed [mechanic's liens](#) on many occasions here at Musings. Given the interest in this [powerful collection tool](#), a contractor may think that this remedy, when used properly, will cover any provision of labor or materials to a project. We've discussed [one exception](#) to this seemingly universal rule previously.

Another exception is highlighted by a recent case in the Western District of Virginia Federal district court. In [Summit Community Bank v. Blue Ridge Shadows Hotel](#) the Court considered the question of what supplies to a construction project are subject to a mechanic's lien in Virginia. In this case, the Western District bankruptcy court determined that furniture delivered to a hotel during construction was properly subject to a mechanic's lien. Unfortunately for the lienholder, the U. S. District Court disagreed.

The Court stated that furniture, including tables, lamps, chairs, etc. are not "improvements" within the meaning of the [mechanic's lien statute](#). In short, the Court determined that the Virginia statute requires more of a connection between the materials and the structure than is present with personal property with the sole connection of "presence" in the building. The Court did not go so far as to require a physical connection, leaving open the question of where on the spectrum of personal property with only a "presence" connection and an irremovable fixture would allow materials delivered to a job site to be subject to a lien.

The takeaway? First of all, not all work or materials are subject to lien. This means that a contractor, subcontractor or supplier must be careful in what it includes in a lien, particularly in light of the [picky nature of these liens](#) and the ease with which the Virginia courts will invalidate them. Second of all, just because a claim is not subject to lien does not mean that a contractor is completely without remedy. A breach of contract action is always a possibility (of course this case is a bankruptcy case and a [lien is always a better option](#) in such circumstances).

As always, I encourage you to consult a Virginia [construction attorney](#) to discuss your options prior to moving forward with a mechanic's lien or any other claim related action.

Image via [Stock Exchange](#).

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