



## Where Mechanic's Liens and Contracts Collide



Today at Construction Law Musings, we're back to a discussion of [mechanic's liens](#).

This past week, the [Loudoun County](#) Circuit Court here in Virginia had an opportunity to discuss the interaction between mechanic's liens, contracts and the law of fixtures. In [TWP Enters. v Dressel](#), the Court considered a provision of a contract between the TWP Enterprises, a supplier of materials to the construction project, and the builder for the defendant. The provision between the supplier and builder essentially stated that until such time as TWP's materials were paid for in full, TWP kept title to them (check out the case link above for the full text of the provision).

Needless to say, the builder did not pay and TWP filed a mechanic's lien then sued to enforce that lien. The owners demurred to the complaint and asked the Court to dismiss the claim on several grounds, among them that the contractual provision described above precluded the enforcement of the lien because TWP retained title to the materials despite the fact that they had been incorporated into the structure of the building and were therefore part of the realty.

After initially denying the demurrer, the Court denied the defendants' motion to reconsider and stated the following:

1. The contract was between supplier and builder and the owners were not third party beneficiaries to the contract.
2. The provision was for the benefit of TWP and therefore TWP could waive it and enforce a lien.
3. To enforce the provision described above as argued by the owners would create and *implied* waiver of lien rights, and finally,
4. A mechanic's lien is a [creature of statute](#) and to decide that materials that become a part of the structure and that are incapable of being removed would still be titled in the name of the supplier would be absurd.

In short, the Court (rightly in my opinion) refused to allow this contractual provision (in a contract to which the owners were not a party) to essentially waive TWP's mechanic's lien rights. However, the Court seemed to imply that in the right circumstances with the right provisions, a contract could change the dynamic and cause issues for a supplier or contractor seeking to enforce a mechanic's lien. This case is therefore one more reason to [be careful with your contractual language](#) and to make sure that you work with an [experienced Virginia construction attorney](#) to assure that you are protected.

*As always, I welcome and encourage your comments below, please share your thoughts. Also, please [subscribe](#) to keep up with the latest Construction Law Musings.*