



December 2013

Alabama Court of Appeals Reiterates the Strict Requirements for Filing a Proper Materialman Lien

In a recent Alabama Civil Circuit Court of Appeals ("Court of Appeals") decision, *Gunther v. Carpet Systems of Huntsville, Inc.*, 2013 WL 5496178 (Ala. Civ. App. Oct. 4, 2013), the Court of Appeals highlighted the notice provision required to assert a materialman lien against the owner of a project. Specifically, the Court of Appeals noted that a contractor or subcontractor, providing supplies for a project, *must* give written notice to the owner of its services, including the price term, *prior to* furnishing the supplies to the project. *Gunther*, 2013 WL 5496178 at *7. Failure to give this notice to the owner prior to providing the supplies for the project, will render the materialman lien *defective and unenforceable*.

The relevant facts of this case began in the Spring of 2009, when the Gunther Family ("Gunthers") hired Antioch Homes, LLC ("Antioch") to construct a new house in the Huntsville, Alabama area. During construction, Antioch suggested the Gunthers obtain certain flooring from Carpet Systems of Huntsville, Inc. ("Carpet Systems"). The Gunthers selected various hardwood flooring from Carpet Systems in early September 2009 and signed a "Notification to Owner of Furnishing Labor and/or Materials" ("Notification Form") on September 22, 2009. The Gunthers and Carpet Systems disagreed whether the cost of the supplies was listed on the Notification Form at the time the Gunthers signed it on September 22, 2009. The parties also disagreed as to whether Carpet Systems had already delivered portions of the hardwood flooring prior to September 22, 2009.

Following the installation of the hardwood flooring, the Gunthers made full payment for the hardwood flooring to Antioch, the contractor, with the expectation that Antioch would provide payment to Carpet Systems for the amount of \$40,650.00, which was owed for the flooring supplies. Antioch failed to pay Carpet Systems and, as a result, Carpet Systems filed suit in the Circuit Court of Madison County against both the Gunthers and Antioch for the total amount owed for the supplies. Antioch failed to appear and Carpet Systems continued its suit solely against the Gunthers.

During the course of litigation, both Carpet Systems and the Gunthers each filed motions for summary judgment before the trial court in Madison County ("Trial Court"). The Trial Court ruled that Carpet Systems did hold a proper materialman lien and awarded it \$40,650.00, plus costs. The Gunthers then promptly appealed, arguing that Carpet Systems was not entitled to recover any amount because it failed to properly follow the requirements of the materialman lien statute, *Ala. Code* § 35-22-10 ("Materialman Lien Statute"). Specifically, the Gunthers

argued that Carpet Systems failed to comply with the Materialman Lien Statute provision requiring a subcontractor supplier to “notify the owner of his or her *in writing* that certain specified material *will be* furnished by him or her to the contractor . . . for use in the building or improvements on the land of the owner . . . at certain specified prices.” *Ala. Code* § 35-22-10 (1975)(emphasis added).

On appeal, the Appellate Court considered the statutory requirements and evidence submitted by both parties concerning the Notification Form and time period of delivery. Ultimately, the Appellate Court concluded that the Trial Court erred in granting judgment in favor of Carpet Systems because the Appellate Court had real concerns whether Carpet Systems fully complied with the requirements of the Materialman Lien Statute. Notably, the Appellate Court identified the two issues potentially rendering the Materialman Lien ineffective: (1) whether the Notification Form contained the price terms, and (2) whether the Notification Form was provided to the owner *prior* to supplying the hardwood flooring. *Gunther*, 2013 WL 5496178, *2 (Ala. Civ. App. 2013) (emphasis added) (citing *Saunders v. Lawson*, 982 So.2d 1091, 1093 (Ala. Civ. App. 2006)). Thus, the Appellate Court reversed the Trial Court’s judgment and remanded the case for trial on the issue of the materialman lien.

This case is an important reminder to all suppliers of projects, both big and small. In order to properly obtain a materialman lien over a project, the supplier must provide the project owner with notice ***before*** providing supplies to the worksite. Importantly, this notice must include the ***total price*** of the supplies to be provided. A supplier’s failure to provide the price term, or the inclusion of a lower price in the notice, will reduce the materialman lien accordingly or worse, destroy the materialman lien altogether. As such, supplier contractors or subcontractors must remember to provide conforming notice to the owner prior to delivering any supplies to a project of any supplies to a project. Doing so will ensure the proper legal protections are available to the supplier should litigation be required to secure payment.

For more information, contact:

[Atoyia A. Scott](#) in Mobile at (251) 345-8253 or ascott@burr.com

[Daniel L. Burkard](#) in Mobile at (251) 345-8220 or dburkard@burr.com

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