

Can Contract Provisions Alter Your Lien Rights?

My friend Chris Hill recently posted a blog post on Construction Law Musings discussing a recent Virginia trial level decision in [TWP Enterprises v. Dressel](#), wherein the court addressed the question of whether contractual provisions can alter a party's mechanic lien rights. The blog post is highly recommended: [Where Mechanic's Liens and Contracts Collide](#).

Chris explains the issue in the case well:

[T]he 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...

The owners argued - essentially - that since the supplier maintained ownership interest in the materials, they had - in effect - waived their right to lien the project, because they couldn't lien their own materials.

As an attorney, this argument seems dubious at best; one that doesn't pass the "smell test." With that said, it does have a logical foundation and I suppose I understand how the attorneys got this concept.

The Virginia trial court gave four or five different reasons in rejecting the argument and holding that the mechanic lien was indeed valid. One of the enumerated reasons that caught my attention was one directed to Virginia's public policy, summarized by Chris in his blog post as follows: "To enforce the provision described above as argued by the owners would create and implied waiver of lien rights."

In other words, this argument would allow the suppliers - in a round-about way - to waive their lien rights before performing work. And this, [as we previously discussed on the Construction Lien Blog - isn't allowed in most states.](#)

Read this article on the Construction Lien Blog [here](#):