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# THE Construct

Your Guide to Law in the Construction Industry



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## Construction Contract Claims Against a Third-Party Lender?

### The Unforeseen Consequences of a Standard Practice

For those of us who commonly represent lenders, there is nothing more unsettling than hearing the words "course and pattern of conduct" or "dominion and control" or some variation of the same. Any suit where someone seeks to impose liability on a bank for something above and beyond the amounts loaned and repaid is a scary one for lenders (and ultimately should be a scary one for anyone who may need to borrow money in the future). One area in which lender liability has been recently trending is the construction area. A recent example of that trend came in the case of *Atlantic Builders Group, Inc. v. Old Line Bank (In re Prince Frederick Investment, LLC)*, 516 B.R. 778 (Bankr. D. Md. 2014).

In this case, the general contractor for a medical facility sought to subordinate the construction lenders' deed of trust lien claim (the author is unfamiliar with the pre-bankruptcy history, but presumably the contractor's priming mechanic's lien rights were unenforceable) on a theory of equitable subordination. The contractor claimed that, because the lender exercised significant control of the construction process, namely, when and how the money would be dispersed, and did not provide

## North Carolina Gearing Up for Major Road Improvement Projects

By [Stephanie U. Roberts](#)

Few things shout "economic development" louder than substantial road improvement projects. For Division 9 of the North Carolina Department of Transportation, many more developments are underway. The Winston-Salem Northern Beltway is currently under construction. What does this mean for you?

Click [here](#) to read the entire article.

## Virginia Legislation Significantly Impacts Construction Industry

By [Douglas T. Stark](#)

At its recently concluded 2015 Regular Session, the Virginia General Assembly passed legislation which will significantly affect those persons who deal with potential mechanic's lienors. The revision to section 43-3 of the Virginia Code declares that any attempt by a subcontractor or materialman to "waive" or "diminish" his lien rights prior to furnishing labor or materials is "null and void." The legislation may be notable for who and what it does *not* affect.

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## Righting a Wrong in West Virginia: The Residential Construction Right to Cure

enough funds under the construction line to allow the project to be completed, the lender was not entitled to enforce its lien to the detriment of the contractor allegedly harmed most by the conduct.

Ultimately, the Bankruptcy Court found that the general contractor could not prove its case for a couple of reasons.

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By [John R. Teare, Jr.](#)

In residential construction, problems can arise with customers that cause expensive litigation. In West Virginia, a right to cure in residential construction by statute can alleviate such costs.

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## Featured Construction Practice Team Member



[Bryan G. Scott](#) - Member and Co-Chair of the Construction Practice Group

Mr. Scott is a Member in the Winston-Salem, North Carolina, office. He represents and counsels construction industry clients in the drafting and negotiation of construction contracts and in disputes involving cost impact and delay claims, design and defect claims, mechanics' liens, insurance coverage, licensing, and other day-to-day operational concerns. Mr. Scott also maintains an active business litigation practice and routinely assists clients in the area of creditors' rights. He is AV Preeminent Peer Review Rated by Martindale-Hubbell and was recently listed among *North Carolina Business* magazine's 2015 "Legal Elite" in the area of Construction Law. He is licensed to practice in North Carolina and Virginia.



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