

# Just When You Thought General Contractors Were Necessary Parties. . .

Did you think that a subcontractor had to name a general contractor in a [mechanic's lien](#) suit? I did. Did you think that nothing about this changed in the case where a Virginia mechanic's lien was "bonded off" pursuant to [Va. Code Section 43-71](#)? I did.

Well, a recent [Virginia Supreme Court](#) case, [Synchronized Construction Services Inc. v. Prav Lodging LLC](#), seems to at least create some doubt as to whether the a general contractor is a "necessary" party to a lawsuit by a subcontractor in the case where a bond is posted for release of a mechanic's lien.

In *Prav Lodging*, the facts were a bit unusual. The day after the mechanic's lien was recorded by Synchronized Construction Services, Inc. ("Synchronized") the construction manager, Paris Development Group, the construction manager and *de facto* general contractor, went out of business. Despite this fact, and after the lien was bonded off, Synchronized sued to enforce the lien and for breach of contract against Paris. The wrinkle here is that Synchronized was unable to serve several defendants, among them Paris, within one year of filing suit as required by Virginia statute. In the Circuit Court, the financing bank moved to dismiss the suit for failure to serve necessary parties. The Circuit Court dismissed the breach of contract count but refused to dismiss the mechanic's lien count on this basis.

The Bank then filed a second motion to dismiss stating that Paris, a party that was never properly served, was a necessary party and because Paris could not be brought before the court, the court should dismiss the complaint with prejudice. The Circuit Court agreed and dismissed the Complaint. End of story, right? Not so fast.

Despite this fact, the Virginia Supreme Court reversed the dismissal of the mechanic's lien count (in a 4 to 3 decision with a written dissent that I commend to your reading) because once the bond was posted the real estate was no longer in play and therefore the general contractor had no further interest in the property that would make it "necessary" to the suit. The Court reasoned:

*This has a logical impact on the necessary party analysis. If no bond has been posted the inquiry turns upon which parties have a real property interest in the real estate subject to the mechanic's lien, but when a bond is posted the inquiry focuses upon which parties have a pecuniary interest in the bond itself which is likely either to be defeated or diminished by the plaintiff's claim against the bond.*

*[T]he principal on the bond and the surety on the bond are necessary parties. However, the owner of the real estate, the trustee under the deed of trust and the beneficiary of the deed of trust are no longer necessary parties when their only relation to the litigation is their respective real property*



The Supreme Court of Virginia Building (Photo credit: Wikipedia)

*interests in the real estate that had been subject to the mechanic's lien, but that was no longer encumbered once the bond had been posted in accordance with Va. Code § 43-70.*

In short, the Court determined that in the case of a bonded off lien, the general contractor is not a necessary party. Of course it was a close decision on relatively unusual facts and carried a written dissent so it may or may not carry over beyond these particular facts. As always I recommend that you read the case to get the full opinion and the flavor of the dissent and check with a [Virginia construction attorney](#) to determine the best enforcement process if you're ever in this situation.

As a final thought on this case. I would still call it a "best practice" to name the general contractor in such a suit. Even in this case, Synchronized named the GC, but just was unable to serve the GC. They certainly would have been better off if Paris were there for both the lien enforcement count and as a defendant in the breach of contract count as a construction contract may have remedies that are not available in a lien enforcement suit.

I would love to hear any thoughts from you readers on this case once you've had a chance to look it over.

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