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Georgia Court of Appeals Upholds Lien, but the Lien May Have Limited Value

In a recent case, the Georgia Court of Appeals reaffirmed that, in most instances, a contractor's or materialmen's lien may only be asserted against "whatever interest his employer had in the property at the time the work was done or the materials were furnished." *Pinnacle Properties V, LLC v. Mainline Supply of Atlanta, LLC*, 735 S.E.2d 166, 170 (2012).

Pinnacle Properties V, LLC ("Pinnacle") was a developer that owned 34 acres of property. *Id.* at 168. On December 1, 2007, Pinnacle executed four agreements with the Kennesaw Development Authority ("KDA"). *Id.* The two agreements relevant to the case at hand were a Rental Agreement and a Purchase, Sale, Financing, and Option Agreement. *Id.* In these agreements, KDA agreed to purchase the 34 acres for an initial payment in excess of \$11.6 million and to rent the property back to Pinnacle for \$10 so Pinnacle could construct mixed-use office and retail buildings. *Id.* Additionally, the parties agreed that KDA had the option to purchase the improvements from Pinnacle as they were completed, or Pinnacle could purchase both the land and the improvements from KDA. *Id.* The agreements further provided that Pinnacle's ownership of the improvements terminated upon the termination of the Rental Agreement which terminated, "at the latest, on November 30, 2012." *Id.*

To construct the first building of the development, and only building actually completed, Pinnacle hired a general contractor who in turn hired the lien claimant in the case, Mainline Supply of Atlanta, LLC ("Mainline") to provide piping, valves, and fittings for the building. *Id.* at 169. The general contractor failed to pay Mainline for the materials provided so Mainline filed claims of lien and a complaint against Pinnacle and KDA. *Id.* The trial court granted KDA's motion for summary judgment and released KDA from the action. *Id.* Specifically, the court found that "KDA had no ownership in the building, but held a fee simple interest in the land, and that Pinnacle held a usufruct¹ in the land, but had 'title' to the improvements, i.e. the building, which could be encumbered." *Id.* The court then granted Mainline's motion for summary judgment declaring "a special lien and enter[ing] judgment against Pinnacle's 'fee simple interest' to the improvements, its option to sell the improvements or purchase the land, and its interest as a grantee under the deed to secure debt." *Id.* Pinnacle appealed the court's ruling.

In its appeal, Pinnacle argued that it only had a usufruct in the building which is not subject to lien. *Id.* Mainline countered that a lien could attach because Pinnacle, as the lower court found, had a fee simple interest in the building. *Id.* at 170. The appellate court, however, determined that the trial court and both parties were wrong finding that Pinnacle had an estate for years which was subject to the claim of lien filed by Mainline. *Id.* at 171. The court, however, noted that the court's decision "may be mooted by the parties' agreement because the lease expired on November 30, 2012, the day the court's ruling was issued." *Id.* at 172.

This case should serve as a reminder to contractors and material suppliers that the value of any lien they may file against a property is limited to the value of the owner's interest in the property. In many cases, the owner's interest can have little, if any, value. This limited value may be the result of a lender's lien to which the contractor may have agreed to subordinate its lien interest, the owner only has a usufruct in the property, or, as in the case at hand, the owner only has a lease for a very limited amount of time. Even if

¹ A "usufruct" is sometimes referred to as a license to use. The conveyance of a usufruct passes no property interest to the tenant. *Pinnacle*, 735 S.E.2d at 170.

your lien has limited value, filing a lien might provide some negotiation leverage if the property is being transferred to another entity.



If you have any questions about this Legal Alert, please feel free to contact either of the attorneys listed below or the Sutherland attorney with whom you regularly work.

[William R. Wildman](#)
[Eric L. Hurst](#)

404.853.8406
404.853.8197

bill.wildman@sutherland.com
eric.hurst@sutherland.com