

PUBLICATION

Violation of Lease Provisions Can Negate a Mechanic and Materialman's Lien

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Construction professionals performing work and supplying materials to a project for a tenant on leased property may want to see a copy of the lease before they agree to participate and may need to monitor compliance with the lease terms.

In a case in Alabama, a material supplier's lien rights were denied because the tenant failed to comply with the terms of the lease when performing its build out. In *Matador Holdings, Inc. v. HoPo Realty Investments, L.L.C.*, 77 So. 3d 139 (Ala. 2001), the Supreme Court of Alabama held that a supplier who provides materials to a project that violates the terms of a commercial lease cannot properly perfect a materialman's lien.

In *Matador Holdings*, the tenant entered into an agreement to lease a commercial property. The tenant intended to convert the leased premises from a warehouse into an extruded-plastics manufacturing facility. The lease contained several tenant alteration/improvement provisions, including:

- No alterations or improvements could be made by tenant without landlord's prior written consent;
- Tenant was required to submit plans for alteration/improvement to landlord bearing a licensed architect's or engineer's stamp;
- Improvement construction must be performed by contractors suitable to landlord;
- Landlord also disclaimed any action by tenant that may result in a lien on the property; and
- Within 15 days after the filing of a lien, tenant was responsible for either discharging the lien or furnishing landlord with a surety bond.

Tenant contracted with the supplier for materials to be used to convert the leased property to a facility suitable for tenant's production needs. After contracting with the supplier, tenant converted the leased property but later abandoned the property before the lease expired and without paying the supplier for the materials.

In response to tenant's nonpayment, the supplier began the process of perfecting a mechanic and materialman's lien on the property. (The lien would be limited to the interest of the tenant but that is an issue for another post).

The evidence was undisputed that tenant, in contracting with the supplier to alter/improve the leased premises, violated several of the lease provisions, including the requirement that the renovation plans bear the stamp from an architect or engineer. The Supreme Court of Alabama held that because tenant violated the terms of its lease, the supplier's lien against the property was not proper.

Mechanic and material man's liens are not as straightforward as one might expect. The difficulty is in the details. Construction professionals have experience with other contracts influencing their work. (For example, flow down provisions). Construction professionals should also understand that third-party agreements such as leases could influence their lien rights.