

# BURR ARTICLE

## General Conditions Not Lienable in Georgia

Zack Rippeon

July 2013

A 2012 Georgia Court of Appeals decision has significant implications for Georgia contractors by declaring that jobsite general conditions do not constitute improvements to real property such that they can be included in a claim of lien. In *182 Tenth, LLC v. Manhattan Construction Co.*, 316 Ga. App. 776, 730 S.E.2d 495 (Ga.Ct.App. 2012), the appellate court reversed and remanded a trial court decision in Manhattan Construction Company's ("Manhattan") favor foreclosing Manhattan's lien against the real property owned by 182 Tenth, LLC ("182 Tenth").

Manhattan entered into a \$36.25 million contract with Mid Atlanta Properties, Inc. ("Mid Atlanta") to build a condominium complex in midtown Atlanta on 182 Tenth's property along Tenth Street. Several months into the project, a dispute arose between Manhattan and Mid Atlanta regarding payments owed for work performed. Manhattan filed a claim of lien against the real property and brought suit against Mid Atlanta for breach of contract and to foreclose the lien. Manhattan obtained a default judgment against Mid Atlanta for nearly \$5 million, \$2.1 million of which was attributable to unpaid amounts for work performed. The issue of lien foreclosure against the real property proceeded to a jury trial in which the jury awarded Manhattan judgment in the amount of \$1.75 million.

In support of lien foreclosure, Manhattan introduced evidence of its judgment against Mid Atlanta, and that it was still owed more than \$2 million dollars for work performed on the project. 182 Tenth moved for a directed verdict on the grounds that Manhattan failed to provide sufficient evidence that all of its costs associated with the lien amount were, in fact, lienable services under Georgia law. The trial court denied this motion, holding that it was the jury's decision, with guidance from the court, as to the amount of any lien for which Manhattan would be entitled. The trial court effectively shifted the burden onto 182 Tenth to parse non-lienable work from Manhattan's lien claim.

On appeal, 182 Tenth argued that it had no burden to prove which portions of Manhattan's prior judgment against Mid Atlanta were lienable services. The Georgia Court of Appeals agreed, holding that Manhattan's judgment amount against Mid Atlanta was not prima facie evidence of Manhattan's right to a lien against 182 Tenth's real property in that full amount. However, Manhattan provided sufficient evidence for each line item of its judgment against Mid Atlanta, which provided a basis for identifying lienable services. The jury award was less than the full amount, which indicated their consideration of such a distinction. Accordingly, there was no reversible error in the jury instruction.

182 Tenth also claimed on appeal that there was insufficient evidence to support the jury's finding that Manhattan was entitled to foreclose a lien upon the real property. 182 Tenth argued that Manhattan's "general conditions" were not lienable because they were not labor, material or services incorporated into the improvement. Again, the appellate court agreed under the premise that costs such as "cleanup on the job site, insurance costs, on-site staff...small tools, blueprints, progress photos, dumpster rentals/pulls..." did not increase the property value by becoming incorporated *into* the improvement. *Id.* at 499. The appellate court similarly held that interest on Manhattan's unpaid payment applications was not lienable. Accordingly, the judgment entered in Manhattan's favor was reversed and the case remanded.

This holding, until successfully challenged, will result in demands for more itemization by contractors on their line item schedule of values for the sole purpose of reducing lien claims. Contractors should be hesitant to "break out" their general conditions in such a way that they could easily be segregated from what the Court of Appeals deems to be the "real" construction work that increases property value. Real property owners would, no doubt, find it difficult to successfully complete a development and increase their property value without these "non-lienable" costs required of contractors during the construction process. These same owners should not be protected from having their property secure the contractor's payment for those costs.

**FOR MORE INFORMATION, CONTACT:**

[Zach Rippeon](#) in Atlanta at (404) 685-4291 or [zrippeon@burr.com](mailto:zrippeon@burr.com)  
or the Burr & Forman attorney with whom you regularly work.

---

*No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.*

---