**Ask Simon**

**Q: I read your recent explanation about the steps contractors and subcontractors should take to protect their lien rights in the event of a payment dispute. My question is whether there is anything a general contractor can include in its subcontracts to further reduce its exposure to liens by unknown subcontractors and materialmen?**

A: Yes, a general contractor may be able to contractually protect itself (and the property owner) from exposure to potential liens by unknown subcontractors and materialmen by including an anti-assignment clause in its subcontracts.

An anti-assignment clause is a contractual provision precluding the subcontractor from further delegating or assigning its obligations under the subcontract to other subcontractors or materialmen. In some cases, Georgia courts have applied anti-assignment clauses to prevent unknown downstream subcontractors and materialmen from asserting liens against the general contractor and property owner. This is because, under Georgia law, a “subcontractor” for lien purposes is limited to parties in a direct chain of contracts leading to the prime contractor. If the contract between the general contractor and the subcontractor includes an anti-assignment clause, the subcontractor cannot delegate or assign its obligations under the subcontract, and any such delegation is outside the chain of contracts. In other words, if the subcontractor delegates its obligations when there is an anti-assignment clause, the downstream subcontractors and materialmen are outside the chain of contracts and do not have lien rights.

Georgia law is not as clear when the unknown third party is merely a supplier, however. For example, if an unknown third party merely provides materials to an authorized subcontractor, and the authorized subcontractor performs the work, the third party may still be able to assert a lien if the subcontractor did not truly “assign” its obligations under the subcontract in violation of an anti-assignment clause. The extent to which an anti-assignment clause will bar liens by unknown third-party suppliers will likely turn on an interpretation of the breadth of the anti-assignment clause and the work performed by the unknown supplier, if any. Accordingly, anti-assignment clauses should be carefully drafted so that it is clear what work a subcontractor may delegate to third parties, versus what work can be delegated only with the general contractor’s knowledge and consent, versus what work cannot be delegated at all.

From the other perspective, subcontractors and materialmen should be careful to review all contracts in the chain of contracts to make sure they are authorized to perform work or provide materials. If there is an anti-assignment clause in one or more of the contracts in the chain of contracts, subcontractors and materialmen should make sure to obtain verification that the appropriate parties have knowledge of and consent to their work; otherwise, they may lose their lien rights.