**Q: I am a contractor, and I recently learned that the owner of the project I am working on may file for bankruptcy. What can I do to protect myself?**

A: First, the contractor needs to realize that a declaration of bankruptcy by the developer or owner of the project does not constitute a breach of contract. That means the contractor cannot stop working. The contractor must first get approval from the bankruptcy court before it can stop performing work under its contract with the bankrupt entity. This is true even if the contract in question contains a clause providing that the contract is terminated if a party files for bankruptcy. This type of provision is generally not enforceable.

The Bankruptcy Code allows a bankruptcy trustee (in a Chapter 7 liquidation case) or the debtor (in a Chapter 11 reorganization case) either to accept or to reject a partially-performed construction contract. Generally speaking, the bankruptcy court must approve the decision to assume or reject the contract. In the context of a Chapter 7 liquidation case, it is quite unlikely that the bankruptcy trustee will decide to accept a construction contract.

If the trustee or debtor does reject the contract, this constitutes a breach of contract for which the contractor can then assert a claim. The estate of the bankrupt owner will be liable for all damages caused by the breach. However, these damages will be treated as non-priority claims on the estate. If the contract is accepted, the trustee or debtor will have to cure any pre-bankruptcy defaults and continue with performance on the project.

Given the unlikelihood of the acceptance of a construction contract, however, the contractor’s best option to protect its interests is to secure its lien rights. A mechanic’s lien or materialman’s lien is a security interest in real property in favor of an unpaid laborer or supplier of construction services and/or materials. Georgia law requires that a Claim of Lien must be filed in the office of the Clerk of the Superior Court of the county in which the property at issue is located within 90 days after the completion of the work, meaning the last date the labor, services, or materials were supplied to the premises. No later than two business days after the date of filing of the Claim of Lien, the lien claimant must send a copy of the claim of lien via registered or certified mail to the owner of the property or the contractor, as the agent of the owner.

After the Claim of Lien is filed, it must be perfected and foreclosed upon according to the exact requirements of the Georgia lien law. That means that the lien claimant must file a lawsuit against the entity that owes it money within 365 days from the date the Claim of Lien is recorded.

Importantly, a bankruptcy filing by the owner or developer does not remove or postpone the requirements for perfection of materialman’s liens. Given the hyper-technical requirements of the lien statutes and the severe consequences for failing to meet them, the contractor should seek qualified legal counsel as soon as possible after learning of a bankruptcy filing to avoid having a possible recovery lost. The contractor also likely will require counsel regarding any required filings in the bankruptcy court to ensure that its lien rights can be protected there.