No. 22-CV-869

District of Columbia Court of Appeals

CONSYS, INC.,

Plaintiff-Appellant,

v.

CITYPARTNERS 5914, LLC

and

EAGLE BANK

Defendants-Appellees.

On Appeal of D.C. Superior Court's Findings of Fact and Conclusion of Law
Case No. 2020 CA 002042 R(RP)

BRIEF FOR APPELLANT

BRAD C. FRIEND, ESQUIRE
D.C. Bar No. 490430
Kraftson Caudle
1600 Tysons Boulevard, Suite 250
McLean, Virginia 22102
(703) 873-5500
bfriend@kraftsoncaudle.com
Counsel for Appellant Consys, Inc.

February 28, 2023

RULE 28(a)(2) CERTIFICATE AS TO PARTIES

A. Parties and Counsel

Appellant:	Consys, Inc. 732 Kennedy Street, N.W. Washington, D.C. 20011
Appellant Counsel:	Brad C. Friend, Esquire Kraftson Caudle 1600 Tysons Boulevard, Suite 250 McLean, Virginia 22102
Appellee:	City Partners 5914, L.L.C. 1817 Adams Mill Road, N.W. Suite 200 Washington, D.C. 20009
Counsel for Appellee CityPartners 5914, L.L.C.:	Barry A. Haberman, Esquire The Law Office of Barry A. Haberman 51 Monroe Street Suite 1507 Rockville, Maryland 20850
Appellee:	Eagle Bank 7815 Woodmont Avenue Bethesda, Maryland 20814
Counsel for Appellee Eagle Bank:	Michael J. Lichtenstein, Esquire Shulman Rogers 12505 Park Potomac Avenue 6th Floor Potomac, Maryland 20854

B. Rule 26.1 Disclosure Statement

Consys, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock. Consys, Inc. has no subsidiaries.

/s/ Brad C. Friend
Brad C. Friend, Esquire
D.C. Bar No. 490430
Kraftson Caudle
1600 Tysons Boulevard, Suite 250
McLean, Virginia 22102
(703) 873-5500
bfriend@kraftsoncaudle.com

Counsel for Appellant Consys, Inc.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES: **PAGE(S)**

STATUTES: **PAGE(S)**

OTHER AUTHORITIES:

ASSERTION REGARDING APPEAL FROM FINAL ORDER

Consys, Inc. ("Plaintiff") hereby asserts that the D.C. Superior Court's ("Superior Court") Findings of Fact and Conclusion of Law, dated October 6, 2022, in Case No. 2020 CA 002042 R(RP) ("Final Order"), is a final order that disposes of all the parties' claims. Plaintiff files this appeal of the Superior Court's Final Order, and this court has jurisdiction to decide the appeal.

ISSUES PRESENTED FOR APPEAL

1. Pursuant to D.C. Code § 40-301.02, a lien claimant must record its notice of mechanic's lien "during the construction or within 90 days after the earlier of the completion or termination of the project." Whether Plaintiff timely filed its notice of mechanic's lien against CityPartners 5914, LLC's ("CityPartners" or "Defendant") real property during construction or within 90 days after the earlier of the completion or termination of the project at issue?

2. Pursuant to D.C. Code § 40-301.01, "[e]very building erected, improved, added to, or repaired at the direction of the owner, or the owner's authorized agent," shall be subject to a lien in favor of the contractor. Whether, during the receivership of Defendant's real properties, the court-appointed receiver had authority to assume the rights of the Defendant, or act on the Defendant's behalf, in contracting with Plaintiff to remediate Defendant's properties?

3. Whether the court-appointed receiver exceeded his authority by contracting with Plaintiff to install new roofs on the buildings at Defendant's properties?

4. Whether the filing of an undertaking, and related lien release, summarily dismisses a lien claimant's underlying cause of action to enforce its mechanic's lien?

STATEMENT OF THE CASE

On March 27, 2020, Plaintiff filed a Complaint in the Superior Court asserting a cause of action to enforce its mechanic's lien against Defendant's real property. A3. In its Complaint, Plaintiff also filed a separate cause of action for quantum meruit against Defendant. A5. Plaintiff's claims were relating to Plaintiff's unpaid work on Defendant's real properties while such properties were subject to a court-ordered receivership. A3-5. In the Superior Court, the Defendant filed three (3) separate pre-trial motions[1] seeking to dismiss Consys, Inc.'s claims on the ground that the court-appointed receiver lacked authority to contract for Plaintiff's work on the properties. A510, A22, A71. The Superior Court denied all three (3) motions, and in two of its orders the Superior Court

[1] Defendant filed a 12(b)(6) Motion to Dismiss, Motion for Reconsideration of its 12(b)(6) Motion to Dismiss, and Motion for Summary Judgment in response to Plaintiff's Complaint.

specifically held that the receiver was authorized to act on behalf of the Defendant with respect to Plaintiff's work on the properties. A514-516, A28.[2]

After Plaintiff filed its lawsuit, but before trial, the Defendant filed an undertaking with the Court to bond-off Plaintiff's mechanic's lien against Defendant's real property. A528. The appellee, Eagle Bank, as surety, issued a letter of credit as the undertaking and became a party to the litigation *ipso facto* pursuant to D.C. Code § 40-303.18. A528. Subsequently, the Plaintiff proceeded to trial on its mechanic's lien claim and quantum meruit claims asserted in its Complaint.

Upon conclusion of trial, the Superior Court issued its Final Order denying Plaintiff's mechanic's lien claim and quantum meruit claims. A79-96. The Superior Court denied Plaintiff's mechanic's lien on the following grounds[3]:

(1) Plaintiff failed to timely file its notice of mechanic's lien in accordance with D.C. Code § 40-301.02. A93-95.

---

[2] The Superior Court denied Defendant's Motion for Summary Judgment without issuing findings of fact or conclusions of law. A71.

[3] There is no dispute that Plaintiff performed the work at issue in its mechanic's lien, the work was performed on Defendant's real property at 1331-1333 Alabama Ave., and that plaintiff was not paid for such work. A78.

(2) The Receiver lacked authority to contract with Plaintiff on behalf of the Defendant in accordance with D.C. Code § 40-301.01. A95-96, A81-85, A88-90.

(3) To the extent agency exists, the Receiver's actions exceeded his authority. A96, A86-88.

(4) The mechanic's lien claim could not be enforced because of the filing of Defendant's undertaking and Plaintiff's related filing of a release of the mechanic's lien against the real property at issue. A93, A96.

Plaintiff appeals the Superior Court's denial of its mechanic's lien claim. Plaintiff is not appealing the Superior Court's denial of its quantum meruit claims.

STATEMENT OF FACTS

This case arose from the receivership of the Congress Heights apartment complex located at 1331 Alabama Ave. S.E., Washington, D.C. 20032, 1333 Alabama Ave. S.E., Washington, D.C. 20032, 1309 Alabama Ave. S.E., Washington, D.C. 20032, and 3210 13th Street S.E., Washington, D.C. 20032.[4] A176. Pursuant to the D.C. Tenant Receivership Act, D.C. Code §§ 42-3651.01, *et seq*. ("TRA"), on September 26, 2017, the Superior Court appointed David Gilmore as the receiver ("Receiver") for the Congress Heights properties. The

[4] The Congress Heights apartment complex included four (4) apartment buildings located on three (3) real properties. The apartment buildings for 1331 and 1333 Alabama Ave. S.E., Washington, D.C. were located on one (1) property.

Receiver was appointed for the specific purpose of remediating substantial code violations and health and safety issues at the properties, which included mold contamination, rodent and pest infestation, water infiltration, and security issues. A180-182.

On December 27, 2017, the Defendant became the title owner of the Congress Heights properties, and it was fully aware that the properties were subject to a receivership at the time. A302, A309. The Defendant was also aware at that time of the Receiver's proposed plan for installing new roofs on the buildings at the properties. A180. Replacement of the buildings' roofs was critically important to the Receiver's proposed remediation plan as the leaking roofs were causing many of the interior code violations and health and safety issues. A182.

Plaintiff and the Receiver estimated that replacement of the roofing and 50% of the roof decks at all four (4) buildings would cost $209,876.00. A185. However, due to the significant remediation work anticipated at the properties, the Receiver requested that the property owners provide funding in the total amount of $2.4 Million Dollars to pay for the remediation work.[5] A188.

[5] The Receiver requested funding from the property owners because the rent received from the tenants of the apartment complex was not enough to pay for the remediation work. *See* D.C. Code § 42-3651.05(f).

The Defendant had the opportunity to object to the receivership and the Receiver's proposed plan, and the Defendant submitted an alternative remediation plan, filed briefs and presented testimony to the Superior Court. A299. The Defendant's alternate plan stated that the buildings' roofs could be patched at a cost of $165,456 – instead of the $209,876 replacement cost proposed by the Receiver. A307. As such, the Defendant's own plan recognized that the roofs required remediation work at significant cost. A307.

In its July 13, 2018, Order, the Superior Court rejected the Defendant's alternative plan for the roofing work, and it concluded that the Receiver's estimate of $209,876 for replacement of the roofs and 50% of the decking was reasonable. A307. In addition to the roofing work, the Superior Court authorized the Receiver to perform other remediation work at all three (3) of Defendant's properties including replacing windows and balcony doors, mold remediation, interior code work unrelated to mold, and other repair work. A306-310. The Superior Court ordered the Defendant to provide a "first installment" of funding for the Receiver's plan in the amount of $895,159.60 "with the understanding that significant additional sums of money may be necessary to remediate the property." A306, A310, A433.

Subsequent to the Superior Court's Order implementing the remediation plan, a fire occurred at 1331 Alabama Ave. which caused structural damage and

roof damage to the buildings at 1331 and 1333 Alabama Ave. A313. In addition, asbestos was discovered in all four (4) buildings at the properties. A319-320. Although the fire damage and asbestos were not considered in the Superior Court's July 13, 2018, Order, they were code violations and health and safety issues at the properties which fell within the Receiver's responsibility and authority for remediation. *See* D.C. Code § 42-3651.06; A176-177, A2310.

The Receiver intended to sequence the remediation work in two phases. A318-319, A323-4. Phase 1 of the work would largely consist of asbestos removal and installation of new roofs on the buildings. A322. Phase 2 would consist of mold abatement, window and door replacement, and numerous other work items. A324. In connection with the Phase I remediation work, on January 30, 2019, the Receiver contracted with Plaintiff to perform the following scope of work at Defendant's properties:

General Conditions including Supervision & PM	$ 74,500.00
Mobilization Costs including Temporary Fence, Utility Shut-Offs, Boarding Up, Dumpsters	$ 53,250.00
Bulk Removal from 1309 Alabama and 3210 13th St	$ 9,600.00
Bulk Removal from 1331 and 1333 Alabama Av (Using Hazmat Procedures)	$ 24,400.00
Abatement of Asbestos Containing Drywall from the Top Floor Ceiling and Wet Walls in Bathrooms and Kitchens – ALL 4 Buildings	$193,276.00

Demo and install new Roofing at ALL 4 Buildings. Includes new roof deck and replacement of up to 50% of rafters	$311,535.00[6]
Structural Repairs in Fire Damaged Units at 1331 Alabama Av	$ 39,786.00
Subtotal	$706,347.00
Overhead @ 4.5%	$ 31,785.62
Contractors Fee @ 5%	$ 35,317.35
Insurance	$ 7,734.50
Grand Total	$781,184.46

A322, A326.

On February 27, 2019, Plaintiff mobilized to the job site to begin performance of its contract work. A331. However, prior to beginning its roof replacement work, the Receiver notified Plaintiff to suspend its roof replacement work for the buildings at 1309 Alabama Ave. and 3210 13th Street. A401. The Receiver did *not* issue a deductive change order to Plaintiff's contract which terminated the roofing work on those buildings. A602. Instead, the Receiver notified Plaintiff that it was going to seek additional funding from court, and it directed Plaintiff to suspend the start of its roofing work on those buildings as a cost savings measure. A399-401, A602. Plaintiff was under the belief that it would later perform the roofing work on 1309 Alabama Ave. and 3210 13th Street

[6] The difference in the roofing work price between Plaintiff's initial estimate ($209,876.00), and its contract price ($311,535.00), was due to replacement of all of the roof decking instead of 50% decking in the estimate and the added cost of replacing 50% of the rafters. A185, A322, A584-585.

once the Receiver obtained additional funding from the court. A606-609, A626-627.

However, the roofing work on the buildings at 1331-1333 Alabama Ave. was not impacted by the Receiver's suspension of the roofing work for the buildings at 1309 Alabama Ave. and 3210 13th Street. A399-402, A602-603. The Receiver never directed Consys, Inc. to suspend its roofing work for the buildings at 1331-1333 Alabama Ave. *Id*. In addition, prior to completion of its roofing work, the Receiver never stated or notified Plaintiff that payment for its roofing work at 1331-1333 Alabama Ave. would be contingent upon the Receiver obtaining additional funding from the court. A602. Plaintiff expected to be fully paid for its roofing work at 1331-1333 Alabama Ave. in accordance with its contract. A602, A616.

By April 25, 2019, Plaintiff had completed most of its roofing work on the buildings at 1331-1333 Alabama Ave. A402. Some roofing work relating to penetrations for ventilation pipes remained unfinished at that time because Plaintiff would have to install the penetrations in the roofs after the Phase 2 plumbing work was completed in the interior of the buildings. A637, A687-688. As of April 25, 2019, Plaintiff had *not* completed its contracted roofing work for the buildings at 1309 Alabama Ave. and 3210 13th Street. A402. Also, Consys, Inc. had not completed its structural repairs for the fire damaged units at 1331 Alabama Ave. at

that time.[7] *Id*. Accordingly, Plaintiff's contracted scope of work for the properties was not completed or terminated as of April 25, 2019. *Id*.

In connection with Plaintiff's April 2019 Invoice, the Receiver paid Plaintiff $50,000.00 of the $351,385.00 invoiced amount. A605. Plaintiff's roofing work at 1331-1333 Alabama Ave. comprised $248,287.00 of the total unpaid invoice balance of $301,385. A402.

Upon receipt of the partial payment for its April 2019 Invoice, Plaintiff did not abandon its contract work but, understandably, Plaintiff notified the Receiver that it was not going to perform any additional work under its contract with the Receiver until its April 2019 Invoice was paid in full. A606-609, A626-627. Plaintiff was willing and able to perform the remainder of its work once it received payment for the work it already performed. *Id*.

Due to the contentious relationship between the Receiver and the Defendant, Mr. Gilmore requested that the Superior Court remove him as the Receiver for the properties.[8] A404. On August 21, 2019, after consideration of numerous briefs

[7] In addition, as of April 25, 2019, none of the Receiver's Phase 2 remediation work relating to window and door replacement, etc., had been started or completed for the properties. A399, A402, A412.

[8] Before his removal, the Receiver made at least two informal requests to the Superior Court for additional funding in order to pay Plaintiff for the work it performed, and admitted that Plaintiff was owed $301,385 for its work. A405-406, A414.

and several days of hearings, the Superior Court ordered that Mr. Gilmore be replaced as Receiver and that the Defendant's property and buildings located at 1331-1333 Alabama Ave. be removed from the receivership. A453-463. The Defendant's properties at 1309 Alabama Ave. and 3210 13th Street remained in the receivership. A452, A457. In its Order, the Superior Court did not address Mr. Gilmore's informal requests to pay Plaintiff $301,385 for the work it performed. *Id*.

On November 15, 2019, Plaintiff filed its notice of intent for mechanic's lien in the Superior Court to preserve its statutory mechanic's lien rights for the unpaid work it performed on the Defendant's property at 1331-1333 Alabama Ave. A464. On March 27, 2020, Plaintiff filed a Complaint in the Superior Court asserting a cause of action to enforce its mechanic's lien. A1.

On December 13, 2021, Eagle Bank issued a letter of credit as an undertaking for the purpose of bonding off Plaintiff's mechanic's lien against Defendant's real property. A528. On December 16, 2021, the Defendant filed Eagle Bank's undertaking with the Superior Court and, as a result, Plaintiff filed its release of the mechanic's lien on December 17, 2021. A528, 530.

SUMMARY OF ARGUMENT

Consys timely filed its notice of mechanic's lien in the Superior Court. The Project at issue was not completed or terminated prior to August 21, 2019. The

Receiver had express authority to assume the rights of Defendant, and to act on behalf of the Defendant, in entering a contract with Plaintiff to remediate the Defendant's properties. The Receiver had express authority pursuant to the TRA and the Superior Court's Orders relating to the receivership. The Superior Court also erred in failing to apply the law of the case regarding its prior holdings on the Receiver's authority. The Receiver did not exceed his authority by contracting with Plaintiff to perform the roofing work at issue in Plaintiff's mechanic's lien. The roofing work was expressly authorized by the Superior Court's Order which implemented the Receiver's remediation plan. In addition, the filing of an undertaking, and a related lien release, did not summarily dismiss Plaintiff's underlying cause of action to enforce its mechanic's lien.

ARGUMENT

I. APPELLANT'S MECHANIC'S LIEN WAS TIMELY FILED.

In its Final Order, the Superior Court denied Plaintiff's mechanic's lien on the ground that Plaintiff failed to timely file its notice of mechanic's lien pursuant to the requirements of D.C. Code § 40-301.02. A93-95. Plaintiff appeals the Superior Court's conclusion that its notice of lien was not timely filed. Plaintiff timely filed its notice of mechanic's lien during construction or within 90 days of completion or termination of the Project at issue. A461, A464.

A. The D.C. Superior Court Applied the Wrong Legal Standard in Determining When Consys, Inc.'s Notice of Mechanic's Lien was Required to be Filed

In determining whether Plaintiff's notice of mechanic's lien was timely filed, the Superior Court erred by applying the wrong legal standard. D.C. law states that a notice of mechanic's lien "shall be recorded during the construction or within 90 days after the earlier of *the completion or termination of the project*." D.C. Code § 40-301.02 (emphasis added).

However, in its Final Order, the Superior Court erroneously held that "[t]he deadline to file a notice of mechanic's lien *is based on the date that the contractor stops performing work or providing materials*." A94 (emphasis added). This is not true, and contradicts the standard established in D.C. Code § 40-301.02. In holding that the triggering event for filing a notice of lien is when the contractor stops performing work or providing materials, the Superior Court erred in its calculation of whether the Plaintiff timely filed its notice within 90 days of completion or termination of the Project at issue. In essence, the Superior Court erred by holding that the 90-day clock started to tick when Plaintiff stopped performing work or providing materials instead of holding that the clock started ticking upon the completion or termination of the Project at issue. A93-95. *See* D.C. Code § 40-301.02.

Standard of Review

The issue of when a notice of mechanic's lien is required to be filed is a question of law and should be reviewed de novo. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its factual findings for clear error."); D.C. Code § 40-301.02.

Discussion

In determining whether a notice of mechanic's lien is timely filed, D.C. law unambiguously states that the triggering event for the 90-day lien filing period is based upon the day *the project* was completed or terminated, whichever is earlier. D.C. Code § 40-301.02. D.C. law does *not* state that a contractor must file its notice of lien within 90-days of when it stops performing work or providing materials.[9] D.C. Code § 40-301.02. *See Phoenix Iron Co. v. The Richmond*, 6 Mackey 180 (D.C. 1887) (holding that "our statute makes the completion of the building the point from which the time for the filing of the notice of the lien is to be reckoned, and not the completion of the work . . . .").

[9] If the District had intended for the triggering event to be the day a contractor stopped performing work or providing of materials, it could have easily included such language within D.C. Code § 40-301.02 just as other jurisdictions have done. *See* Va. Code § 43-4 (requiring a contractor to file its lien within 90-days of the last day of the month *when it last performs work*).

In its Final Order, the Superior erred as a matter of law by not following the requirements of D.C. Code § 40-301.02. The Superior Court held in error that "[t]he deadline to file a notice of mechanic's lien *is based on the date that the contractor stops performing work or providing materials*." A94 (emphasis added). By applying the wrong legal standard in its Final Order, the Superior Court miscalculated the 90-day window in analyzing whether Plaintiff's notice of lien was timely filed. The Superior Court wrongfully focused on when Plaintiff stopped performing work and concluded that Plaintiff completed its *work*[10] on April 25, 2019. A93-94. The Superior Court did not make a finding or conclusion as to when *the Project* at issue was completed or terminated. A93-95.

By wrongfully concluding that the triggering event for Plaintiff's lien filing was April 25, 2019 (when Plaintiff stopped performing work), the Superior Court held that Plaintiff's November 15, 2019, lien filing was untimely because it was required to file its notice of lien by July 24, 2019 (90 days from April 25, 2019). A94. Accordingly, the Superior Court applied the wrong legal standard in analyzing whether Plaintiff's notice of lien was timely filed. D.C. Code § 40-301.02, A93-95. D.C. Code 40-301.02 states that the triggering event for filing a

[10] Plaintiff's contract work was not completed or terminated as of April 25, 2019, because Plaintiff had not completed its roofing work on the buildings or structural repair work. A402. Regardless, the completion or termination of *the Project* is the triggering event for filing a notice of lien. D.C. Code § 40-301.02.

notice of lien is based upon the completion or termination of the Project – not when a contractor stops work.[11] D.C. Code § 40-301.02.

As discussed below, if the Superior Court would have applied the correct legal standard established in D.C. Code § 40-301.02 (i.e., the completion or termination of *the Project*), the evidence presented at trial demonstrated that Plaintiff's notice of lien was timely filed. A402, A461, A464. The Project at issue was not completed or terminated prior to August 21, 2019, and therefore Plaintiff's notice of lien was timely filed on November 15, 2019 (within 90 days of August 21, 2019). *Id*. D.C. Code § 40-301.02.

B. The Project at Issue was not Completed or Terminated Prior to August 21, 2019

As discussed above, the Superior Court applied the wrong legal standard and erred in concluding that Plaintiff failed to file its notice of lien within 90 days after April 25, 2019 (the last day that Plaintiff performed work for the Project). A93-95; D.C. Code § 40-301.02. If the Court would have applied the correct legal standard (i.e., completion or termination of *the project*), the facts of the present case clearly

[11] In addition, the definition of "Project" in D.C. Code § 40-301.03(7) does not mean that a contractor must file its notice of lien within 90-days of when it stops work. *See* A93. The definition of "Project" is broad and recognizes that a project includes any work provided by one or more contractors. D.C. Code § 40-301.03(7). Thus, if a project involves multiple contractors or scopes of work, the day in which all of the project work is completed would be the day when *the project* is considered to be completed. D.C. Code §§ 40-301.02 and -301.03(7).

showed that the Project at issue was not completed or terminated prior August 21, 2019, and therefore Plaintiff's notice of mechanic's lien was timely filed on November 15, 2019. A402, A461, 464.

Standard of Review

The issue of whether the Project at issue was completed or terminated prior to August 21, 2019, is a mixed issue of fact and law should be reviewed for clear error and de novo with respect to the Superior Court's August 21, 2019, Order. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its factual findings for clear error."); D.C. Code § 40-301.02; A306-310.

Discussion

D.C. law requires a mechanic's lien claimant to file its notice of lien during construction or within 90 days of "the earlier of the completion or termination of the project." D.C. Code § 40-301.02. As such, the timeliness of a lien filing is dependent upon determining what the project was and when was the project completed or terminated.

1. What was the Project at issue?

In its Final Order, the Superior Court did not make any finding to define "the project" in this case. A93-95. In ruling upon the timeliness of Plaintiff's lien

filing, the Superior Court focused on Plaintiff's "work." *Id*. However, the Project at issue in the present case was not limited to Plaintiff's contract scope of work with the Receiver. A176, A306-310. Rather, the Project at issue involved the Receiver's entire remediation of the substantial code violations and health and safety issues at all four (4) buildings at Defendant's Congress Heights properties. *Id*.

Consys, Inc. contracted with the Receiver to perform a portion of the Receiver's remediation work for the Project. A322. However, the Plaintiff was not under contract to perform all of the work for the Project. A322, A306-310. Also, the Receiver engaged other entities to perform remediation work at Defendant's properties. A295. The Receiver engaged Wheeler Creek CDC to manage the properties, and they performed work which included cleaning the units, maintenance, pest control and security measures. *Id*. Thus, the Project at issue in this case was not solely limited to Plaintiff's contractual scope of work with the Receiver. A322. The Project at issue was the entirety of the Receiver's planned remediation of the Defendant's Congress Heights properties. A176, A306-310. This is consistent with the Superior Court's Final Order where it referred to the receivership of Defendant's Congress Heights properties as the "Project." A76.

2. Was the Project at issue completed or terminated prior to August 21, 2019?

The Project at issue was not completed or terminated prior to August 21, 2019, when the Superior Court entered an order removing Defendant's properties at 1331-1333 Alabama Ave. from the receivership. A461. In the first instance, prior to August 21, 2019, there was no order from the Superior Court which terminated the Project, or any portion thereof.

Conversely, the evidence clearly showed that in fact, as of August 21, 2019, the remediation work for the Project was not complete. In its August 21, 2019, Order, the Superior Court held that "the remediation of the non-fire-damaged buildings [1309 Alabama Ave. and 3210 13th Street] is not at issue in the present motion and shall continue." A452. Therefore, the Project at issue was not complete prior to August 21, 2019, because the remediation work at 1309 Alabama Ave. and 3210 13th Street was not completed or terminated at that time. A452, A457.

D.C. law holds that a project is not complete if an item of work is not completed. In *Riggs Fire Ins. Co. v. Shedd*, 16 App. D.C. 150 (D.C. 1900), the D.C. Court of Appeals held that a building could not be deemed complete to affect the mechanic's lien rights of subcontractors when items of work remained unfinished. *Riggs*, 16 App. D.C. 150, 155-156. The court of appeals held:

> Of course, strictly speaking, no work can be regarded as finished and complete when the slightest thing required by the contract has been left undone. Until the last nail has been driven, and every key has been fitted, and the minutest detail has been arranged, no work can be said to have been fully completed.

Riggs, 16 App. D.C. 150, 155.

Moreover, even if Plaintiff's contract scope of work is deemed to be the "project" at issue, its contract scope of work was not completed or terminated prior to August 21, 2019. Plaintiff was contracted to perform all the items of work listed in its January 28, 2019, proposal. A322. However, Plaintiff did not complete its contract work as of August 21, 2019. A322, A402. As of August 21, 2019, Plaintiff had not completed its contract work for structural repairs at 1331-1333 Alabama Ave. relating to the fire damage. A402, A605-607, A611.[12] Plaintiff did not complete its roofing work on the buildings at 1309 Alabama Avenue and 3210 13th Street. *Id*.[13] For the buildings at 1331-1333 Alabama Ave., Plaintiff also had unfinished roofing work relating to installation of plumbing and HVAC vents

[12] Plaintiff did not complete its contracted structural repairs at 1331-1333 Alabama Ave. as of August 21, 2019, because it was not fully paid for its April 2019 invoice. A606-609, A626-627.

[13] Plaintiff did not complete its roofing work at 1309 Alabama Avenue and 3210 13th Street as of August 21, 2019, because the Receiver suspended the work. A401, A602. Prior to August 21, 2019, the Receiver never issued a deductive change order for Plaintiff's contract work or provided any written notice to Plaintiff stating that Plaintiff's remediation work for the Project was terminated. A602-603.

through the roof.[14] A637, A687-688. *See Riggs*, 16 App. D.C. 150, 156 (holding that the building was not complete because there was a downspout to be placed and other unfinished work).

If a contractor's work on a project is suspended and subsequently terminated without ever being completed (which is exactly what happened in the present case[15]), the 90-day clock does not start on the day the contractor stopped work on the project, but would instead start on the day the project is terminated or the day the remaining work on the Project is completed, whichever is earlier. D.C. Code § 40-301.02. Accordingly, in the present case, the date Plaintiff last performed work on the Project (April 25, 2019) has no relevance in determining when *the Project* at issue was completed or terminated. D.C. Code § 40-301.02.

However, the Superior Court's August 21, 2019, Order is relevant in determining when the Project at issue was terminated and whether Plaintiff timely filed its notice of lien. A426, A464. Based upon its August 21, 2019, Order, the court established that (1) Plaintiff's remaining contract work on 1331-1333

[14] Plaintiff never abandoned its work. It was willing and able to return to the site and complete its work once it was paid. A606-609, A626-627. In addition, prior to August 21, 2019, the Receiver never terminated any portion of Plaintiff's contract scope of work. A602.

[15] On April 4, 2019, the Receiver directed Plaintiff to suspend, not terminate, its installation of new roofs on the buildings at 1309 Alabama Ave. and 3210 13th Street. A401, A602.

Alabama Ave. was voided as the properties were removed from the receivership; and (2) Plaintiff's remaining contract work on 1309 Alabama Avenue and 3210 13th Street was voided by the Court's removal of Mr. Gilmore as the Receiver. A453-462.

Accordingly, the Superior Court erred in its conclusion that Plaintiff completed its work by April 25, 2019. Based upon the Superior Court's August 21, 2019, Order, Plaintiff's contract work with the Receiver was effectively terminated. *Id*. Thus, even if Plaintiff's contract scope of work is deemed to be the "project" as referenced in D.C. Code § 40-301.02, the Project was not completed or terminated prior to the Superior Court's August 21, 2019, Order. A402, A426, A605-606, A611, A637, A687-688. As such, pursuant to D.C. Code § 40-301.02, Plaintiff timely filed its notice of intent for its mechanic's lien within 90 days of August 21, 2019, and the Superior Court's findings and conclusions on the timeliness of Plaintiff's lien filing were clearly erroneous and in contradiction of D.C. Code § 40-301.02.[16]

[16] D.C. law has recognized that its mechanic's lien statutes are for the benefit of the contractor, are remedial in nature, and should be liberally construed for purposes of adjudicating a mechanic's lien claim. *See U.S., to Use of Standard Oil Co., v. City Trust, Safe Deposit & Security Co.*, 21 App. D.C. 369 (D.C. 1903).

II. THE RECEIVER HAD EXPRESS AUTHORITY TO ASSUME THE RIGHTS OF THE DEFENDANT, AND ACT ON BEHALF OF THE DEFENDANT, DURING THE RECEIVERSHIP.

Defendant's main defense to Plaintiff's mechanic's lien claim has been that the Receiver did not have authority to act on behalf of the Defendant during the receivership, and therefore Plaintiff had no mechanic's lien rights pursuant to D.C. Code § 40-301.01. The Defendant's "lack of authority" argument was rejected by the Superior Court in three separate pre-trial motions. A515-516, A28.[17] However, in its Final Order, the Superior Court denied Plaintiff's mechanic's lien claim on the ground that the Receiver lacked authority and did not act at the direction of Defendant or as Defendant's agent. A93, A95-96, A81-91.

The Superior Court erred as a matter of law in concluding that the Receiver lacked authority to act on behalf of the Defendant during the receivership. In managing and remediating the Defendant's real property during the receivership, the Receiver had authority to act on behalf of the Defendant and to enter into contracts for the remediation of Defendant's real property.

[17] The Superior Court rejected Defendant's argument that the Receiver was not authorized to act on behalf of the Defendant in Defendant's Motion to Dismiss, Motion for Reconsideration of its Motion to Dismiss, and its Motion for Summary Judgment in this case. The Superior Court did not issue any findings or conclusions in denying Defendant's Motion for Summary Judgment. A71.

A. The Receiver had Express Authority to Assume the Rights of the Defendant, and Act on Behalf of the Defendant, Pursuant to the TRA and the Superior Court's Orders.

The authority of the Receiver was established by the TRA and the Superior Court's Orders which created the receivership and implemented the Receiver's plan. D.C. Code § 42-3651.06; A177, A306-310. The Receiver was granted authority to assume the rights of the Defendant, and to act on behalf of the Defendant, in managing, using and remediating the Defendant's property during the receivership. D.C. Code § 42-3651.06; A176-177, A306-310. The Receiver had express legal authority under the TRA to enter into contracts with contractors for the remediation of Defendant's real property. D.C. Code § 42-3651.06.

Standard of Review

The issue of whether the Receiver had authority to assume the rights of the Defendant, or to act on behalf of the Defendant, during the receivership is a question of law and should be reviewed de novo. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its factual findings for clear error."); D.C. Code § 42-3651.06; A176, A299.

Discussion

In contracting with Plaintiff to remediate the Defendant's real property as part of the receivership, the Receiver was acting with the assumed rights of the

Defendant, or on behalf of the Defendant, pursuant to the express authority granted to the Receiver by the TRA and the Superior Court's Orders. D.C. Code § 42-3651.06; A176, A299. The TRA establishes that the Receiver assumes the rights of the property, and acts on behalf of the property owner, during the receivership. D.C. Code § 42-3651.06.

Pursuant to the express language of the TRA, and during the receivership period, the Receiver is appointed as the sole authority to manage and remediate the owner's real property *by assuming the owner's rights*. The TRA states:

> **(a)** A receiver shall:
>
> > **(1)** Take charge of the operation and management of the rental housing accommodation ***and assume all rights to possess and use the building***, fixtures, furnishings, records, and other related property and goods ***that the owner or property manager would have if the receiver had not been appointed***; and
> >
> > ***
> >
> > **(3)** Have the power to collect all rents and payments for use and occupancy;
> >
> > ***
> >
> > **(7)** ***Assume all rights of the owner*** to enforce or avoid terms of a lease, mortgage, secured transactions, and other contracts related to the rental housing accommodation and its operation; and
> >
> > ***

> **(d)** The receiver shall not make ***capital improvements*** to the property ***except those necessary to abate housing code violations***.

D.C. Code § 42-3651.06 (emphasis added).

Accordingly, the TRA establishes that the Receiver assumes the rights of the owner and has express legal authority to act on behalf of the property owner to possess, use and manage the Property, collect rent, enforce contracts, and make capital improvements to abate housing code violations. D.C. Code § 42-3651.06. By assuming all rights of the Defendant to possess and use its real property, the Receiver had the legal right to contract for the remediation of Defendant's property, and during the receivership it acted as the owner, or on its behalf, in doing so. D.C. Code § 42-3651.06. Thus, the Receiver's contract with Plaintiff to remediate the Defendant's property was within his assumed rights in accordance with the requirements of the TRA. D.C. Code § 42-3651.06.

In addition to the TRA, the Receiver's authority to assume the rights of the Defendant, and act on behalf of the Defendant, was established by the Superior Court's September 26, 2017, Order, which appointed Mr. Gilmore as the Receiver, and its July 13, 2018, Order, which implemented the Receiver's remediation plan.

In its September 26, 2017, Order, the Superior Court ordered that the Receiver "shall have all powers and duties as conferred in D.C. Code § 42-

3651.06,[18] with directions *and authority* to accomplish the following, in accordance with the terms of this Order and subject to the supervision of this court:"

> 1. During the term of this Order, the Receiver is the ***sole person responsible*** for abating D.C. Code violations and threats to life, health, safety, and security at the Property.
>
> 3. The Receiver ***shall make all repairs that are reasonable and necessary to abate violations*** of the District of Columbia code that currently exist ***or may exist in the future*** at the Property while this Order is in effect.
>
> 4. The Receiver ***shall take all actions that are reasonable and necessary to abate threats to life, health, safety, and security that*** currently exist ***or may exist in the future*** at the Property while this Order is in effect. …
>
> 6. The Receiver ***is authorized to retain*** and employ such agents, employees, ***and contractors***, including members and employees of the Receiver's firm, ***as may in the Receiver's judgment be appropriate or necessary*** to assist in the performance of their duties under this Order. *Id*. (emphasis added.)

A177 (emphasis added).

Accordingly, pursuant to the Superior Court's September 26, 2017, Order, the Receiver had the sole and express authority during the receivership to abate the

[18] As discussed above, D.C. Code § 42-3651.06 expressly states that the Receiver assumes the rights of the property owner.

health and safety issues at the Property which were reasonable and necessary – including the express authority to enter into contracts with contractors for such purposes. A176-177.

The Receiver's authority to act for the Defendant was further demonstrated in the Superior Court's July 13, 2018, Order, which adopted the Receiver's remediation plan. A306-310. In its July 13, 2018, Order, the Superior Court expressly authorized the Receiver to remediate the roofs at Defendant's properties – the very work that is the subject of Plaintiff's mechanic's lien. A307.

Furthermore, the Defendant has admitted that the Receiver had authority and was acting for the Defendant during the receivership. The Defendant has admitted that "Mr. Gilmore was not just "managing" the Property *for Defendant* but had complete and total control over the Property pursuant to various Orders in the Receivership Case." A497 (emphasis added), A682-683. At trial, the Defendant admitted that the roofing work was authorized for $209,000, plus the 20% contingency stated in the Superior Court's Order. A685. The Defendant further admitted that the Receiver had the authority to engage contractors. A666.

Pursuant to the TRA and the Superior Court's Orders, the Receiver had express legal authority to contract with Plaintiff to perform the roofing work at issue in this case. D.C. Code § 42-3651.06; A176-177, A307. By assuming the rights of the Defendant during the receivership, the Receiver acted as the owner in

contracting with Plaintiff to remediate the Defendant's real property. *Id*. By assuming the rights of the owner, the Receiver stood in the shoes of the owner with respect to its contract with Plaintiff to remediate the real properties. *Id*.

Even if the TRA did not specifically state that the Receiver assumed the rights of the property owner during the receivership, the Receiver was still acting on behalf of the Defendant as its authorized agent during the receivership. Pursuant to the TRA and the Superior Court's Orders, the Receiver would qualify as the Defendant's authorized agent during the receivership by operation of law. *See* D.C. Code § 40-301.01; D.C. Code § 42-3651.06; A176-177, A306-310, A515-516, A28. An authorized agency relationship can be established by agreement, consent, implication, appearance, *or operation of law*. *See* 2A C.J.S. Agency § 48 ("An agency relationship may be created or arise by operation of law."); *Malaney v. Mears*, 2 Lack.L.N. 77 (Pa. Ct. Comm. Pleas 1896) (holding that plaintiff had a right to a mechanic's lien for work performed on a building in receivership).

Accordingly, Plaintiff's mechanic's lien claim satisfied the "authority" requirements of D.C. Code § 40-301.01 because its contract and construction work at Defendant's property were at the direction the Receiver, who had assumed the rights of the Defendant during the receivership. D.C. Code § 40-301.01; D.C. Code § 42-3651.06; A176-177.

B. The Defendant Consented to the Receiver's Authority

The Receiver's authority was not only established by the TRA and the Superior Court's Orders, but is was also created by the Defendant's consent to the receivership. At the time it obtained title to the properties, the Defendant had prior notice of the receivership and the Receiver's authority to manage and remediate the properties during the tenure of the receivership.

Standard of Review

The issue of whether the Defendant consented to the receivership and the Receiver's authority is a question of law and should be reviewed de novo. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its factual findings for clear error."); A176.

Discussion

On September 26, 2017, the prior owner(s) of the Congress Heights properties consented to the Superior Court's creation of the receivership. A176. On December 27, 2017, the Defendant obtained title to the properties. A302. The Defendant obtained title to the properties with full knowledge and prior notice that the properties were subject to the receivership and the Receiver's authority. A176. D.C. Code § 42-3651.06.

On behalf of the Defendant, Mr. Geoffrey Griffis[19] testified at trial to the following:

"Q: Is it accurate to say that, at the time that you took ownership of those properties, you did so being fully aware that those properties were in receivership and subject to all of the requirements of the receivership. Is that accurate?

A: Yes."

A640.

Accordingly, the Defendant took ownership of the properties subject to the prior owners' consent to the receivership, and subject to the existing receivership and the Receiver's authority. A176, A640. D.C. Code § 42-3651.06.

Furthermore, the Defendant had notice of the Receivers' proposed remediation plan, which included Plaintiff's proposed roofing work on the buildings. A180. As the Superior Court stated in its July 13, 2018, Order, "the court finds, based on the evidence in the record, that *CityPartners 5914 purchased the property with knowledge of its condition and notice of the receivership. CityPartners 5914, therefore, should have reasonably anticipated a need to fund*

[19] The former property owners and CityPartners are related. Mr. Geoffrey Griffis, CityPartners' executive and main witness at trial, held himself out as a "joint venture partner" with Sanford as early as January 2015. A176, A302. Mr. Griffis had actual notice of the receivership and the Receiver's proposed plan to remediate the property prior to the Defendant becoming the titled owner of the properties. A176, A180, A640.

the remediation of the conditions at the Property, and it is appropriate that they should fund the Receiver's plan." A309 (emphasis added).

Accordingly, by obtaining title to the properties with notice of the pending receivership, the Defendant consented to the receivership and the Receiver's authority established by the TRA and the Superior Court's September 26, 2017, Order.

C. The D.C. Superior Court Failed to Follow the Law of the Case

Prior to its Final Order, the issue of the Receiver's authority was argued by the parties and ruled upon by the Superior Court. A515-516, A28. In two (2) prior orders, the Superior Court held that the Receiver was authorized to act on behalf of the Defendant in contracting with Plaintiff. *Id*. However, in its Final Order, the Superior Court disregarded its prior orders and the law of the case and held that the Receiver lacked authority. A93, A95-96, A81-91. Plaintiff appeals the Superior Court's holding on this issue on the ground that it failed to follow the law of the case.

Standard of Review

The issue of whether the Superior Court failed to follow the law of the case is a question of law and should be reviewed de novo. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its

factual findings for clear error."); *See Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980); A510, A22.

Discussion

Prior to trial, CityPartners filed a Motion to Dismiss, Motion for Reconsideration and Motion for Summary Judgment, arguing therein that Consys, Inc.'s claims should be dismissed because the Receiver lacked authority to act on behalf of the Defendant. A497, A510, A22, A70. The Superior Court rejected Defendant's argument in all three motions. A510, A22, A71. However, in its Final Order, the Superior Court failed to follow its prior rulings and held that the Receiver lacked authority. A93, A95-96, A81-91.

The "law of the case" doctrine "holds that once the court has decided a point in a case, that point becomes and remains settled unless or until it is reversed or modified by a higher court." *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980). The doctrine serves the judicial system's need to dispose of cases efficiently by discouraging "multiple attempts to prevail on a single question." *Id*. *See Kaplan v. Pointer*, 501 A.2d 1269, 1270 (D.C. 1985) ("The law of the case doctrine bars a trial court from reconsidering a question of law that was already decided in the same case by another court of coordinate jurisdiction."); *Prince Const. Co., Inc. v. D.C. Contract Appeals Bd.*, 892 A.2d. 380, 386 (D.C. 2006); *Puckrein v. Jenkins*, 884 A.2d 46, 55 (D.C. 2005). The law of the case doctrine

"does not apply where the first ruling has little or no finality to it" or "the first ruling is clearly erroneous in light of newly-presented facts or a change in substantive law." *Kritsidimas*, 411 A.2d 370, 372.

The law of the case doctrine is applicable in the present case. In its order denying Defendant's Motion to Dismiss, the Superior Court held, "[t]he issue at the heart of CityPartners' arguments for dismissal is whether Consys acted "at the direction of the owner, or the owner's authorized agent" when the Receiver engaged it to repair the Property. *The Court finds in the affirmative because the TRA and Orders in the Receivership Case endow the Receiver with such authorization*." A515 (emphasis added.) The Superior Court issued further legal findings and conclusions in denying the Motion to Dismiss:

> The TRA and court Order make clear that the Receiver had authority – indeed sole and complete authority – to operate, manage, possess, use, and enter into contracts with contractors to conform the Property with D.C. health and safety codes. ***Although CityPartners rejects the notion that the Receiver was acting as its "agent," . . . the Receiver was functionally subject "to direction of the owner" and served functionally as "the owner's authorized agent" by court Order. Otherwise said, the TRA and court Order grant the Receiver agency only by another name.***

A516 (emphasis added).

In addition, the Superior Court rejected Defendant's argument that no authorized agency existed because there was no express owner authorization. The

Superior Court stated that "such a proposition would subvert the purpose of the TRA." A516. Upon the Superior Court's denial of its Motion to Dismiss, Defendant filed a Motion for Reconsideration with the Superior Court repeating its contention that the Receiver lacked authority because no agency relationship existed between the Receiver and Defendant. A28. However, the Superior Court again rejected Defendant's argument and found that the TRA and the Superior Court's Orders "expressly granted the Receiver authority to order work to repair the Property." *Id*. The Superior Court also rejected Defendant's "lack of authority" argument when it denied Defendant's Motion for Summary Judgment in this case.[20] A71.

The Superior Court's prior decisions and findings in its orders denying Defendant's Motion to Dismiss and Motion for Reconsideration are the law of the case. *See Kritsidimas*, 411 A.2d 370, 371. The Superior Court's decisions and findings in its prior orders in this case had finality. *Id*. at 371-372 (holding that order denying motion to dismiss had finality); *See Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1196-1197 (D.C. 1984); *Kaplan*, 501 A.2d 1269, 1270 (holding that an order denying motion for summary judgment possessed sufficient finality). Also, the Superior Court's previous rulings were correct as they were

[20] The Superior Court denied Defendant's Motion for Summary Judgment in its Pretrial Order. A71.

consistent with the law established by the TRA and the Superior Court's Orders relating to the receivership.[21] D.C. Code § 42-3651.06; A515-516, A28, A176-177, A306-310.

Accordingly, pursuant to the law of the case doctrine, the Superior Court was barred as a matter of law from reconsidering its prior orders and rulings which held that the Receiver had authority to act on behalf of the Defendant during the receivership.

III. THE RECEIVER DID NOT EXCEED HIS AUTHORITY BY CONTRACTING WITH CONSYS, INC. TO INSTALL NEW ROOFS ON DEFENDANT'S BUILDINGS.

The Superior Court held that, to the extent the Receiver had authority to act on behalf of the Defendant, the Receiver exceeded his authority. A96, A86-88. However, the Superior Court's finding on this issue was clearly erroneous because the Superior Court had expressly authorized the Receiver to perform the roofing remediation work that is the subject of Plaintiff's mechanic's lien claim. A176, A307.

Standard of Review

The issue of whether the Receiver exceeded his authority by contracting with Consys, Inc. to install new roofs on Defendant's buildings is a question of fact

[21] Thus, there is no evidence that the Superior Court's previous rulings were clearly erroneous due to newly presented facts or a change in substantive law. A510, A22. *See Kritsidimas*, 411 A.2d 370, 372.

and should be reviewed for clear error. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its factual findings for clear error."); D.C. Code § 42-3651.06; A176-177, A306-310.

Discussion

In its September 26, 2017, Order, the Superior Court granted the Receiver express authority to enter into contracts with contractors to remediate Defendant's properties. A177. In its July 13, 2018, Order, the Superior Court granted the Receiver express authority to install new roofs on the four (4) buildings at Defendant's properties. A307. Based upon this express authority, the Receiver contracted with Plaintiff install new roofs on the buildings at Defendant's properties. A321-322, A326.

Plaintiff performed the roofing work for the buildings at 1331-1333 Alabama Ave., and its subsequently filed mechanic's lien against Defendant's property was based upon its unpaid roofing work (i.e., the same roofing work which the Receiver was expressly authorized to perform).[22] A402, A464.

[22] Also, the Receiver did not exceed his authority by contracting with Plaintiff to remediate the fire damage and asbestos. Such remediation work was reasonable and necessary to abate code violations and health and safety issues, and was within the authority granted by the TRA and the Superior Court's September 26, 2017, Order. D.C. Code § 42-3651.06; A176-177.

Accordingly, the Superior Court's finding in its Final Order that the Receiver exceeded his authority in contracting with Plaintiff was clearly erroneous as it contradicted the unambiguous express authority granted to the Receiver in its prior orders. A176-177, A307.

The Defendant has repeatedly argued that the Receiver exceeded or lacked authority because he exhausted the Defendant's $895,159 initial funding provided for the receivership. A497, A505. The Defendant contends that the Receiver's authority is limited to the amount of funding the receivership has and, since the Receiver lacked available funds to pay Plaintiff for its roofing work, the Receiver exceeded his authority to contract for the roofing work. *Id*.

In the first instance, there was never any evidence presented at trial, or a finding of fact in the Superior Court's Final Order, that the Receiver had exhausted the receivership funding at the time it contracted with Plaintiff in late January 2019. A532, A677, A76. Ultimately, there was a shortfall in the receivership funding during the Project,[23] which lead to the Receiver's failure to pay Plaintiff for its roofing work and its subsequent mechanic's lien filing. A411-415, A464. However, the receivership funding issues occurred after the Plaintiff's contract was entered into. A321-322, A401.

[23] Plaintiff had no control or knowledge as to how the Receiver managed its accounts and funding.

Moreover, the Receiver's authority to remediate the code violations and the health and safety issues at the properties was not limited, or proportional, to the amount of funding within the receivership account. D.C. Code § 42-3651.06; A176-177, A306-310. The Receiver's authority was based upon the rights and grants expressly provided in the TRA and the Superior Court's Orders which established the receivership and implemented the Receiver's plan. *Id*. There is no provision within the TRA, or the Superior Court's Orders, which states that the Receiver's authority is limited to the funding of the receivership. *Id*.

Also, the Superior Court held that the Defendant's initial funding of $895,159 was a "first installment" and the Receiver would have the opportunity to apply for additional funding if necessary. A306, A308, A310. The Superior Court held that if the $895,159 was "insufficient to cover remediation costs, the Receiver is free to apply for additional funds." A308. The Superior Court further ordered "CityPartners 5914 to fund $895,159 *with the understanding that significant additional sums of money* may be necessary to remediate the property." A310 (emphasis added.)

Accordingly, the Receiver had authority to perform reasonable and necessary remediation work first and subsequently request funding for such work. A176-177, A306-310. *See Brown v. Hazlehurst*, 54 Md. 26 (Md. Ct. App. 1880) (holding that receiver was entitled to payment for insurance expense although it

was not previously approved by the court). The Receiver's authority was based upon the TRA and the Superior Court's Orders – not the receivership funding.[24] D.C. Code § 42-3651.06; A176-177, A306-310.

In sum, the Superior Court's September 26, 2017, Order, and its July 13, 2018, Order, specifically held that the Receiver was authorized to engage contractors to abate the code violations and health and safety issues at Defendant's properties and to perform the roofing work at issue in Plaintiff's mechanic's lien. A177. In contracting with Plaintiff to remediate the buildings' roofs, the Receiver did not exceed his authority – he was acting within his express authority granted by the TRA and the Superior Court. D.C. Code § 42-3651.06; A176-177, A306-310. There is no factual or legal support for the Superior Court's finding that the Receiver exceeded his authority in contracting with Plaintiff to perform the roofing work at issue.

[24] Although the Receiver's authority to manage and remediate properties is broad and not based upon funding, Plaintiff is not arguing that the Receiver's authority was unlimited. The Plaintiff recognizes that the Receiver's authority was not a "blank check," but was limited to what was reasonable and necessary to remediate the properties. The Receiver would not have authority to perform unreasonable or unnecessary remediation work. However, it cannot be credibly argued that the Receiver's remediation work in the present case were unreasonable or unnecessary. The defective roofs, and their associated water infiltration, were a root cause of the health and safety issues at the properties. The fire damage and asbestos were life threatening health and safety issues.

IV. THE FILING OF AN UNDERTAKING DID NOT SUMMARILY DISMISS PLAINTIFF'S UNDERLYING MECHANIC'S LIEN CLAIM.

In its Final Order, the Superior Court held that Defendant was entitled to judgment with respect to Plaintiff's mechanic's lien claim because Defendant posted a letter of credit to "bond off" the lien and, in relation thereto, Plaintiff filed a release of its lien in the Superior Court. A93, A96. The Superior Court stated, "[u]nder such facts, there is no legal basis to issue a mechanic's lien in favor of Plaintiff." A96. Plaintiff appeals the Superior Court's holding that Defendant's undertaking, and Plaintiff's related lien release, summarily dismissed Plaintiff's underlying cause of action to enforce its mechanic's lien claim as alleged in Count I of its Complaint, or otherwise represented an independent basis to deny Plaintiff's underlying mechanic's lien claim in its Complaint.

Standard of Review

The issue of whether the posting of an undertaking to "bond off" a mechanic's lien against real property, and the filing of a lien release related thereto, summarily dismisses the underlying mechanic's lien claim is a question of law and should be reviewed de novo. D.C. Code § 17-305(a). *See FDS Rest., Inc. v. All Plumbing Inc.*, 241 A.3d 222, 227 (D.C. 2020) ("On appeal from a bench trial, we review the trial court's legal conclusions de novo and its factual findings for clear error."). D.C. Code §§ 40-303.16 and -303.17 and -303.18.

Discussion

Following the recording of its notice of mechanic's lien against Defendant's real property, on March 26, 2020, Plaintiff filed a lawsuit against CityPartners in the Superior Court. A1. Count I of its Complaint was a claim to enforce its mechanic's lien. A3-5. In its request for relief for Count I, Plaintiff requested that the court determine the "validity, priority and amount" of its lien. A5.

On November 23, 2021, the Superior Court issued an order permitting the Defendant to post a letter of credit in the amount of $343,865.07 to bond off Plaintiff's mechanic's lien against the real property. A75. On December 13, 2021, Eagle Bank, as surety, issued an irrevocable letter of credit in the amount required by the Superior Court and for the benefit of Plaintiff. A528. The letter of credit was an undertaking under D.C. law and obligated Eagle Bank to pay any judgment entered with respect to Plaintiff's mechanic's lien claim. D.C. Code § 40-303.16 and -303.18; A528. Eagle Bank's letter of credit specifically referenced that it was an "undertaking" and stated that Plaintiff was entitled to draw upon the letter of credit if the Superior Court entered a judgment against Defendant. A529.

On December 16, 2021, the Defendant filed the letter of credit with the Superior Court and, as a result of such filing, Plaintiff filed a release of its mechanic's lien against the Defendant's real property on December 21, 2021. A528 and A530. Plaintiff's release of the lien did not release or waive its cause of action

to enforce its mechanic's lien as asserted in Count I of its Complaint. A530. In accordance with D.C. law, Plaintiff proceeded to trial with the enforcement of its mechanic's lien claim with the full intent and understanding that Eagle Bank's letter of credit would be liable to the extent Plaintiff was successful in proving entitlement to its underlying mechanic's lien claim asserted in Count I of its Complaint. D.C. Code §§ 40-301.01, *et. seq*.; D.C. Code §§ 40-303.16 and -303.18.

Nevertheless, at trial, CityPartners argued that the posting of the letter of credit, and Plaintiff's filing of the lien release in Superior Court, operated to summarily dismiss Plaintiff's underlying mechanic's lien claim as asserted in Count I of its Complaint. A560. In its Final Order, the Superior Court agreed with Defendant and held that the posting of the letter of credit and the related lien release was an independent basis for denying Plaintiff's mechanic's lien claim as asserted in Count I of the Complaint. A93, A96.

The Superior Court's holding was in error as a matter of law on several grounds. In the first instance, the Superior Court's November 23, 2021, Order did not release or dismiss Plaintiff's underlying mechanic's lien claim asserted in its Complaint. A75. The purpose of the Defendant's undertaking and the intent of the Superior Court's Order was to remove/release the actual mechanic's lien as an encumbrance against the real property. D.C. Code §§ 40-303.16 and -303.18;

A464, A528, A530. The undertaking (letter of credit) took the place of lien, and Plaintiff's cause of action in Count I of its Complaint proceeded against the letter of credit. D.C. Code §§ 40-303.16 and -303.18.

Secondly, to hold that the posting of an undertaking operates to dismiss a lien claimant's underlying cause of action to enforce its mechanic's lien would defeat the entire purpose and intent of the undertaking and deprive a lien claimant of its statutory mechanic's lien rights. A mechanic's lien is a statutory creation which provides a contractor with an independent claim/cause of action to recover compensation for unpaid work performed on real property. D.C. Code §§ 40-301.01 and -301.02. *See Moore v. Axelrod*, 443 A.2d 40, 43 (D.C. 1982).

The mechanic's lien itself operates as a security interest against the real property, and allows a lien claimant to recover against the real property if the claimant is successful in proving its claim. D.C. Code §§ 40-301.01, *et seq*. Pursuant to D.C. law, the property owner may post an undertaking to remove the actual lien as an encumbrance against the real property. D.C. Code § 40-303.16. In doing so, the mechanic's lien is released from the property and the undertaking becomes the substituted security interest for the lien claimant's underlying cause of action. D.C. Code §§ 40-303.16 and -303.18.

Accordingly, the undertaking allows the property owner to remove the lien from property on the basis that the lien claimant's underlying cause of action to

enforce the mechanic's lien will proceed against the new security, the undertaking, instead of the real property itself. D.C. Code §§ 40-303.16 and -303.18. If the lien claimant is successful in proving its underlying mechanic's lien claim and meeting the statutory requirements, the lien claimant may recover against the undertaking. D.C. Code §§ 40-303.16 and -303.18. Conversely, if the lien claimant is unable to prove its entitlement to the statutory mechanic's lien, then the claimant cannot recover against the undertaking.

However, if the posting of an undertaking and a lien release constitutes an independent basis to automatically deny a lien claimant's underlying cause of action to enforce the mechanic's lien, the lien claimant would have no means to recover against the undertaking. An automatic dismissal of the underlying mechanic's lien cause of action would prevent any recovery of a lien claimant's statutory lien rights and its ability to collect from the very substituted security (undertaking) which was intended to take the place of the lien. In such a scenario, an undertaking would be worthless to the lien claimant and its statutory right to a mechanic's lien would be waived and voided by the mere posting of an undertaking. That is not how undertakings work, as the undertaking merely substitutes the security interest for the underlying lien claim (undertaking replaces real property).

Moreover, the purpose and intent of an undertaking is expressed in the D.C. mechanic's lien statutes. D.C. Code § 40-303.16 states:

> (a) ***In any suit to enforce a lien under this chapter***, the owner of the building and premises to which the lien may have attached may be allowed to either:
>
> (1) Pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct; or
>
> (2) File a written undertaking, with one or more sureties, to be approved by the court, ***to the effect that he or she and they will pay the judgment that may be recovered***, which may include interest and costs; provided, that:
>
> (A) Where the surety is to be provided by bond, only one bond shall be required; and
>
> (B) ***The judgment shall be rendered against all the persons so undertaking***."

D.C. Code § 40-303.16(a) (2) (emphasis added). Accordingly, in any suit to enforce a lien, the undertaking and surety are subject to any judgment on the lien claim. D.C. Code §§ 40-303.16. Furthermore, both Sections 40-303.17 and 40-303.18 hold that a claimant's suit to enforce a lien claim continues after the filing of an undertaking, and the owner and surety are liable for any judgment. D.C. Code §§ 40-303.17 states:

> **D.C. Code § 40–303.17. Undertaking to discharge liens before suit.**

> Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, ***and the same proceedings shall be had as above directed in relation to the undertaking*** to be given after the commencement of the suit, and said undertaking shall be to the effect that ***the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien***.

D.C. Code § 40-303.17 (emphasis added). Similarly, Section 40-303.18 states that the suit continues:

> **D.C. Code § 40–303.18. Decree against sureties.**
>
> If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; ***if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner***.

D.C. Code § 40-303.18 (emphasis added).

In the present case, Eagle Bank's undertaking was approved after Plaintiff's lawsuit was filed. A1, A75. As a result of the undertaking, Eagle Bank was, *ipso facto*, a party to Plaintiff's lawsuit and Plaintiff's cause of action to enforce its mechanic's lien claim proceeded to trial. D.C. Code § 40-303.18. As a matter of law, there is no basis in the D.C. statutes for the Superior Court's conclusion that

the filing of an undertaking and lien release was grounds for denying Plaintiff's mechanic's lien claim. D.C. Code §§ 40-303.16 and -303.17 and -303.18.

In addition, the court's holding was in error because the Defendant was barred from asserting this "release" defense for the first time at trial. The Defendant did not file any pre-trial motions requesting that the Superior Court dismiss Plaintiff's underlying mechanic's lien claim due to the undertaking and lien release. The Defendant also failed to amend its asserted defenses in the Joint Pretrial Statement to include its "release" defense. A57. The Defendant's failure to present its "release" defense in any pre-trial motion, and its failure to amend its asserted defenses in the Joint Pretrial Statement, barred its right to present its newly asserted release defense at trial. A70. The Superior Court's Pretrial Order stated, "[n]o claims or defenses other than those described in the Joint Pretrial Statement will be entertained at trial absent a showing of good cause or excusable neglect." A70. At trial, the Defendant did not present any evidence of good cause or excusable neglect to explain its newly asserted defense. A532, A677.

For the reasons state herein, the Superior Court erred as a matter of law in concluding that the Defendant's undertaking, and Plaintiff's related lien release, was an independent basis for denying Plaintiff's underlying mechanic's lien cause of action as asserted in Count I of the Complaint. Posting an undertaking, as was done in the present case, does not release or dismiss a lien claimant's underlying

cause of action to enforce its mechanic's lien. Indeed, if posting a letter of credit would have the effect of dismissing the underlying mechanic's lien cause of action, a mechanic's lien would be worthless.

CONCLUSION

The Superior Court erred as a matter of law in denying Plaintiff's mechanic's lien claim on the ground that it was untimely. The Superior Court failed to apply the correct legal standard required by D.C. Code § 40-301.02 (i.e., 90 days from completion or termination of the project). The Project at issue was not completed or terminated prior to August 21, 2019. As such, the Plaintiff timely filed its notice of lien during construction or within 90 days of the completion or termination of the Project at issue. D.C. Code § 40-301.02. The Superior Court also erred as a matter of law in denying Plaintiff's mechanic's lien claim on the ground that the Receiver lacked authority in accordance with the requirements of D.C. Code § 40-301.01. Pursuant to the TRA and the Superior Court's Orders, the Receiver had express authority to assume the rights of the Defendant during the receivership and to contract with Plaintiff to remediate the properties. Also, based upon the law of the case doctrine, the Superior Court was barred from reconsidering its prior rulings which held that the Receiver had authority.

The Superior Court's finding that the Receiver exceeded his authority by contracting with Plaintiff to perform the roofing work was clearly erroneous based

upon the Superior Court's prior order which authorized the proposed roofing work. Lastly, the Superior Court erred as a matter of law by holding that the Defendant's filing of an undertaking, and Plaintiff's related lien release, was an independent basis for denying Plaintiff's underlying cause of action to enforce its mechanic's lien. Plaintiff respectfully requests that the D.C. Court of Appeals grant Plaintiff's mechanic's lien claim and enter judgment against Eagle Bank, and its letter of credit, in the amount of $301,385 (plus prejudgment interest from June 1, 2019), or alternatively remand this case to the Superior Court for entry of judgment as requested herein.

February 28, 2023

/s/ Brad C. Friend

BRAD C. FRIEND, ESQUIRE
D.C. Bar No. 490430
Kraftson Caudle
1600 Tysons Boulevard, Suite 250
McLean, Virginia 22102
(703) 873-5500
bfriend@kraftsoncaudle.com
Counsel for Appellant Consys, Inc.

ADDENDUM - RULE 28(f) REPRODUCTION OF STATUTES

D.C. Code § 17-305(a)

In considering an order or judgment of a lower court (or any of its divisions or branches) brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

D.C. Code § 40-301.01

Every building erected, improved, added to, or repaired at the direction of the owner, or the owner's authorized agent, and the land on which the same is erected, intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of the owner, shall be subject to a lien in favor of the contractor who contracted with the owner, in the amount of the contract price or, in the absence of an express contract, the reasonable value of the project; provided, that to enforce the lien, the contractor claiming the lien shall record in the land records a notice of intent and comply with the other procedures prescribed in this chapter.

D.C. Code § 40-301.02

(a)(1) A contractor desiring to enforce the lien shall record in the land records a notice of intent that identifies the property subject to the lien and states the amount due or to become due to the contractor. The notice of intent shall be recorded during the construction or within 90 days after the earlier of the completion or termination of the project. If the notice of intent is not recorded in the land records during the construction or within 90 days after the earlier of the completion or termination of the project, the contractor's lien shall terminate upon the expiration of the 90-day period. A notice of intent that does not comply with subsection (b) of this section shall be void.

D.C. Code § 40-301.03(7)

(7) "Project" means any work or materials provided by a contractor for the erection, construction, improvement, repair of, or addition to any real property in the District of Columbia at the direction of an owner, or an owner's authorized agent, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached.

D.C. Code § 40-303.16

(a) In any suit to enforce a lien under this chapter, the owner of the building and premises to which the lien may have attached may be allowed to either:

(1) Pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct; or

(2) File a written undertaking, with one or more sureties, to be approved by the court, to the effect that he or she and they will pay the judgment that may be recovered, which may include interest and costs; provided, that:

(A) Where the surety is to be provided by bond, only one bond shall be required; and

(B) The judgment shall be rendered against all the persons so undertaking.

(b) On the payment of the money into court, or the approval of the undertaking pursuant to subsection (a)(2) of this section, the property shall be released from the lien, and any money so paid in shall be subject to the final decree of the court.

D.C. Code § 40-303.17

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien.

D.C. Code § 40-303.18

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner.

D.C. Code § 42-3651.01

The purpose of the appointment of a receiver under this chapter shall be to safeguard the health, safety, and security of the tenants of a rental housing accommodation if there exists a violation of District of Columbia or federal law which seriously threatens the tenant's health, safety, or security. The receiver shall not take actions inconsistent with this purpose or take actions other than those necessary and proper to the maintenance and repair of the rental housing accommodation. Nothing in this chapter shall be construed to limit or abrogate any other common law or statutory right to petition for receivership, nor shall anything in this chapter prevent a tenant or tenant association from asserting as a defense or counterclaim a housing provider's non-compliance with applicable housing regulations.

D.C. Code § 42-3651.05

(f)(1) As part of any proceeding commenced for the appointment of a receiver, or in any plan for abatement presented by a respondent, the Court shall order that the respondent or any owner of the subject rental housing accommodation, or both, contribute funds in excess of the rents collected from the rental housing accommodation for any or all of the following purposes:

(A) Abating housing code violations;

(B) Reimbursing the District of Columbia for any abatements undertaken;

(C) Assuring that any conditions that are a serious threat to the health, safety, or security of the occupants or public are corrected;

(D) Relocating and maintaining tenants displaced during the implementation of any abatement plan into comparable units including paying any difference in the rent due to relocation;

(E) Satisfying the up-front receivership costs, including posting a bond pursuant to subsection (d) of this section, reasonable up-front compensation to the receiver, and any costs associated with obtaining professional studies or evaluations of the property's condition and abatement needs;

(F) Refunding prior rents paid of at least one-half of any month's rent up to 3 years prior to the date the receivership was granted for any period of time that the District of Columbia presents evidence that the rental housing accommodation suffered from a serious state of disrepair; and

(G) For other purposes reasonably necessary in the ordinary course of business of the property, including maintenance and upkeep of the rental housing accommodation, payment of utility bills, mortgages and other debts, and payment of the receiver's fees.

D.C. Code § 42-3651.06

(a) A receiver shall:

(1) Take charge of the operation and management of the rental housing accommodation and assume all rights to possess and use the building, fixtures, furnishings, records, and other related property and goods that the owner or property manager would have if the receiver had not been appointed; and

(2) Give notice of the receivership, in accordance with subsection (b) of this section, to the rental housing accommodation's tenants and employees, all public utility providers whom the owner was responsible for paying before the appointment of the receiver, any mortgage company holding a lien against the property, and any other person whom the Court orders should receive notice;

(3) Have the power to collect all rents and payments for use and occupancy;

(4)(A) Provide the Court, within 30 days following the issuance of the order of appointment, with a plan for the rehabilitation of the rental housing accommodation, including the projected dates when all causes giving rise to the appointment will be abated and a financial forecast indicating how the rehabilitation will be paid for;

(B) Serve a copy of the plan upon the owner of record, the Attorney General for the District of Columbia, and the tenants of the rental housing accommodation, or their representative;

(5)(A) Report to the Court every 6 months after the filing of the report required under paragraph (4) of this subsection, describing the progress made in abating the conditions giving rise to the appointment, updating the financial forecast for the rehabilitation, and describing any changes in the condition of the rental housing accommodation that may change the proposed completion dates submitted under paragraph (4) of this subsection;

(B) Serve a copy of the report upon the owner of record, the Attorney General for the District of Columbia, and the tenants of the rental housing accommodation, or their representative;

(6) Preserve all property and records with which the receiver has been entrusted;

(7) Assume all rights of the owner to enforce or avoid terms of a lease, mortgage, secured transactions, and other contracts related to the rental housing accommodation and its operation; and

(8) Carry out any other duties established by the Court.

(b) The notice required by subsection (a)(2) of this section shall include, at a minimum, the following information in not less than 12-point type in both English and Spanish:

(1) The reasons for the receivership;

(2) The identity of the receiver, his or her address and telephone number;

(3) The receiver's responsibilities and duties;

(4) The anticipated duration of the receivership; and

(5) That no tenant is required to move as a result of the receivership.

(c) The receiver shall, under the plan described in subsection (a)(4) of this section, make payments in accordance with the following priorities:

(1) As a first priority, using monthly rental income, to abate housing code violations if abatement is required within 7 days of service of notice, and, after abatement of the conditions, to abate housing code violations if abatement is required within 30 days of service of notice; and

(2) As a second priority, for other purposes reasonably necessary in the ordinary course of business of the property, including maintenance and upkeep of the rental housing accommodation, payment of utility bills, mortgages and other debts, and payment of the receiver's fee.

(d) The receiver shall not make capital improvements to the property except those necessary to abate housing code violations.

(e) The receiver shall not enter into contracts which affect the ownership of the property.

(f) The receiver shall be personally liable only for his or her acts of gross negligence or intentional wrongdoing in carrying out the receivership.

(g) A receiver shall be entitled to a reasonable fee established by the Court and payable from the revenues of the rental housing accommodation.

(h) The receiver may apply for grants and subsidies for the relief of distressed properties to the same extent as the owner of the rental housing accommodation.

(i) The owner, agent, manager, or lessor shall be enjoined from collecting rents and payments for use and occupancy for the duration of the receivership.

(j)(1) In a case in which the court has appointed a receiver in response to a petition made pursuant to section 503, if the court finds, after notice and hearing, that the owner of the rental property currently lacks sufficient funds to pay for rehabilitation of the rental housing accommodation and that such funds cannot be feasibly and timely obtained through grants or subsidies:

(A) The court may issue an order authorizing the Attorney General to supply funding to the receiver, for initial and emergency repairs, from any funds available in the Tenant Receivership Abatement Fund, established by section 106e of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, passed on 2nd reading on August 10, 2021 (Enrolled version of Bill 24-285); or

(B) The Court may extend the receivership in place under this act based on a showing of demonstrated need and authorize the receiver to do either of the following:

(i) Sell the property for a fair-market price to an owner capable of maintaining the property; or

(ii) If the owner is a District of Columbia corporation or other entity, file a petition in the appropriate federal bankruptcy court to place the corporate owner into bankruptcy proceedings pursuant to, and in a manner consistent with, the federal Bankruptcy Code.

(2)(A) If a court issues an order pursuant to paragraph (1)(A) of this subsection, the owner shall be required to repay the funding supplied by the Attorney General no later than 30 days after the receiver receives those funds. Any funds unpaid as of that 30-day deadline shall incur interest at the rate of 6% per annum until repaid. The Attorney General may petition the court to convert the order into a final judgment, and once the order is so converted, the Attorney General may take actions to collect any unpaid balance, using all available collection methods authorized under District or other applicable law.

(B) An owner's obligation to repay funding pursuant to subparagraph (A) of this paragraph shall automatically become a lien on the owner's real property as of the date the Attorney General supplies funds to the receiver pursuant to paragraph (1)(A) of this section.

(C) A lien established pursuant to subparagraph (B) of this paragraph shall be a prior and preferred lien over all other liens or encumbrances on the real property.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:
     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's Taxpayer identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Brad C. Friend
Signature

22-CV-869
Case Number(s)

Brad C. Friend
Name

February 28, 2023
Date

bfriend@kraftsoncaudle.com
Email Addres

CERTIFICATE OF SERVICE

I hereby certify on the 28th day of February 2023, the foregoing Brief and Joint Appendix was served via Federal Express and electronic mail upon the following:

Barry A. Haberman, Esquire
The Law Offices of Barry A. Haberman
51 Monroe Street, Suite 1507
Rockville, Maryland 20850

Counsel for Appellee, CityPartners 5914 L.L.C.

Michael J. Lichtenstein, Esquire
12505 Park Potomac Avenue, 6th Floor
Potomac, Maryland 20854

Counsel for Appellee, Eagle Bank

/s/ Brad C. Friend