

Contractor Licensing Issue Voids Construction Loan in Georgia

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A recent case out of Georgia involved a contractor's licensing failure voiding the construction loan that was financing the project. However, there was a twist....well, several twists—a contractor who was also a lender, an end-of-the-world bunker, and a property that couldn't be developed. Although the facts were unusual, the case provides some takeaways for a lender to consider.

The case, *McMillan v. Rodriguez*, No. A25A0571, 2025 WL 1822463 (Ga. Ct. App. July 2, 2025), did not involve a typical construction loan. Instead, the contractor in the transaction was also the lender. The unusual circumstances didn't stop there. The case involved a self-titled "multi-millionaire" who wanted to build an end-of-days bunker to avoid various disaster scenarios he felt were imminent. He was supposedly willing to spend over a million dollars on the bunker but provided the contractor only about a quarter of that amount. The contractor agreed to loan the additional funds needed and had the owner sign a promissory note.

It turned out the contractor was not licensed as a contractor, a fact of which the property owner was apparently aware. It also turned out that the property wasn't allowed to be developed - the land was subject to a municipal order preventing construction and a permit was never obtained for the bunker. Eventually, construction stopped and the contractor sought payment from the owner. After the contractor threatened to foreclose, the owner sued, claiming the promissory note was void. Under Georgia law, any contract for work that requires a contractor license is unenforceable if the contractor is not licensed. The contractor acknowledged that the construction contract was void but argued that the promissory note was not a contract requiring a contractor license. Rather, the promissory note merely addressed the financing of the project.

The trial court ruled in favor of the property owner and the contractor appealed. The Court of Appeals of Georgia agreed that the promissory note was void. The appellate court was unmoved by the contractor/lender's argument that the loan was not illegal or against public policy and that a lender license was not required. Instead, the court found that the contractor licensing requirement was to be liberally construed and that the promissory note was merely set up to finance the contractor's unlicensed work. The court noted that one cannot do indirectly something that the law does not allow to be done directly.

This case might just be an odd set of facts that would never arise in a typical loan transaction - most lenders are not financing their own building services. However, lenders should still be troubled by the court's willingness to judge enforceability of the promissory note on something other than the terms of that agreement. In a dissenting opinion, one justice called out that issue, finding that the promissory note was legal upon its face and that the court should not have gone behind the facially legal contract to consider other agreements between the parties. As they say, bad facts can make bad law.

One wonders if an enterprising plaintiff might try to push the argument, claiming that a lender's failure to properly diligence a vendor results in a transaction that "... bring[s] about results that the law seeks to prevent..." as the Georgia Appellate Court stated. Let's hope not. But, just in case, it might be a good idea for construction lenders to confirm their vendor management practices are up to date.

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