CHAPTER 5

Mechanics’ Liens

**SECTION 29‑5‑10.** Lien of person furnishing labor and materials for buildings or structures; offers of settlement.

(a) A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him. The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney’s fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien. As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44‑96‑40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. As used in this section, materials furnished and actually used include tools, appliances, machinery, or equipment supplied for use on the building or structure to the extent of their reasonable rental value during their actual use. “Person” as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other entity. For purposes of this section, the term “materials” includes flooring, floor coverings, and wall coverings.

(b) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer or amended offer supersedes any offer previously made under this section by the same party.

An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer, five days before the commencement of the term.

If the offer is rejected, it may not be referred to for any purpose at the trial, but may be considered solely for the purpose of awarding costs and litigation expenses under this section.

For purposes of the award of attorney’s fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic’s lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney’s fees.

If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement.

If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement. If the defendant has not asserted a counterclaim, his offer of settlement is considered to be zero.

HISTORY: 1962 Code Section 45‑251; 1952 Code Section 45‑251; 1942 Code Section 8727; 1932 Code Section 8727; Civ. C. ‘22 Section 5639; Civ. C. ‘12 Section 4113; Civ. C. ‘02 Section 3008; G.S. 2350; R. S. 2456; 1816 (6) 32; 1869 (14) 220; 1922 (32) 944; 1973 (58) 80; 1974 (58) 2183; 1976 Act No. 524, Section 1; 1986 Act No. 408, Section 1; 1990 Act No. 374, Section 2; 1999 Act No. 83, Section 1; 2003 Act No. 51, Section 22.

CROSS REFERENCES

Lien coverage as including reasonable rental value of tools, appliances, machinery, and equipment supplied for improvement of real estate, see Section 29‑5‑22.

Lien of judgments, see Sections 15‑35‑810 et seq.

Security interests and other liens on vehicles, see Sections 56‑19‑610 et seq.

Library References

Mechanics’ Liens 1, 35, 55(1).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 2, 30 to 31, 42, 46, 49.

RESEARCH REFERENCES

Encyclopedias

84 Am. Jur. Trials 367, Using Taxation of Costs to Collect Some Litigation Expenses and Maximize Client Recovery.

S.C. Jur. Appeal and Error Section 145, Remand for Further Proceedings.

S.C. Jur. Arbitration Section 28, Vacating an Award.

S.C. Jur. Arbitration Section 29, Modification or Correction of Award.

S.C. Jur. Architects and Engineers Section 35, Mechanics’ Lien.

S.C. Jur. Attorney Fees Section 63, Mechanics’ Liens.

S.C. Jur. Attorney Fees Section 76, Size of Judgment as Not a Limiting Factor.

S.C. Jur. Construction Law Section 8, Payment.

S.C. Jur. Costs Section 53.1, Mechanics’ Liens.

S.C. Jur. Lis Pendens Section 22, Mechanic’s Liens.

S.C. Jur. Mechanics’ Liens Section 2, Definition.

S.C. Jur. Mechanics’ Liens Section 3, Purpose and Theory.

S.C. Jur. Mechanics’ Liens Section 4, General Rules of Interpretation.

S.C. Jur. Mechanics’ Liens Section 5, Private Property.

S.C. Jur. Mechanics’ Liens Section 9, General Requirements.

S.C. Jur. Mechanics’ Liens Section 10, Amount Secured by Lien.

S.C. Jur. Mechanics’ Liens Section 11, General Requirements.

S.C. Jur. Mechanics’ Liens Section 13, Labor.

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

S.C. Jur. Mechanics’ Liens Section 24, Discharge and Bonding Off.

Forms

Am. Jur. Pl. & Pr. Forms Mechanics’ Liens Section 1 , Introductory Comments.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

8 Causes of Action 2d 749, Cause of Action Against Lessor of Realty to Enforce Construction Lien Based on Work Done Under Contract With Lessee.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Miscellaneous: Mechanic’s Lien—Lis Pendens. 30 S.C. L. Rev. 127.

Annual Survey of South Carolina Law: Practice and Procedure. 38 S.C. L. Rev. 162, Autumn, 1986.

Joint check rule recognized. 39 S.C. L. Rev. 11, Autumn, 1987.

Mechanics’ Liens in South Carolina. 25 S.C. L. Rev. 817.

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

Engineer who furnishes engineering plans and specifications and supervises construction is entitled to mechanic’s lien. 1985 Op. Atty Gen, No. 85‑86, p 244.

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1. In general

Cited in Crum v Jenkins (1928) 145 SC 177, 143 SE 21. Ferguson v Harris (1893) 39 SC 323, 17 SE 782. Lady’s Island Builders, Inc. v Eighth Beaufort McAas Quarters, Inc. (1959, DC SC) 175 F Supp 186. Hering Realty Co. v General Const. Co. (1959, CA4 SC) 272 F2d 371.

Applied in Snipes v Horton (1924) 129 SC 1, 123 SE 321. Willard v Finch (1922) 121 SC 1, 113 SE 302. Gantt v Van Der Hoek (1968) 251 SC 307, 162 SE2d 267.

Court cannot depart from plain language of statute when enforcing mechanics’ lien. Moorhead Const., Inc. v. Enterprise Bank of South Carolina (S.C.App. 2014) 410 S.C. 386, 765 S.E.2d 1. Mechanics’ Liens 245(1); Mechanics’ Liens 246

Procedures for enforcing mechanics’ lien are provided by statute and must be strictly followed. Moorhead Const., Inc. v. Enterprise Bank of South Carolina (S.C.App. 2014) 410 S.C. 386, 765 S.E.2d 1. Mechanics’ Liens 116

For an inchoate mechanic’s lien to become valid, the lien must be perfected and enforced in compliance with the mechanic’s lien statutes. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 116

A mechanic’s lien arises, inchoate, when the labor is performed or the materials are furnished; in other words, when the labor is performed or the materials are furnished, the right exists but the lien has not been perfected. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 168; Mechanics’ Liens 170

The statutory process for a mechanic’s lien encompasses several steps, including: (1) creation of the lien; (2) perfection of the lien; and (3) enforcement of the lien. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 116

Mechanics’ liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 1; Mechanics’ Liens 5

The right to a mechanic’s lien arises, inchoate, when labor is performed or material furnished. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 166; Mechanics’ Liens 168

A mechanic’s lien is purely statutory; therefore, the requirements of the statute must be strictly followed. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 116

Supreme Court is not at liberty to depart from the plain meaning of the statutory language governing mechanics’ liens. Skiba v. Gessner (S.C. 2007) 374 S.C. 208, 648 S.E.2d 605, rehearing denied. Mechanics’ Liens 5

Mechanics’ lien exists only by virtue of statute; therefore, one’s right to a mechanics’ lien is wholly dependent upon the language of the statute creating it. Skiba v. Gessner (S.C. 2007) 374 S.C. 208, 648 S.E.2d 605, rehearing denied. Mechanics’ Liens 5

A valid mechanic’s lien cannot exist without a valid underlying debt. Glidden Coatings & Resins, Div. of SCM Corp. v. Suitt Const. Co., Inc. (S.C.App. 1986) 290 S.C. 240, 349 S.E.2d 89.

Mechanic’s liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute creating them. Shelley Const. Co., Inc. v. Sea Garden Homes, Inc. (S.C.App. 1985) 287 S.C. 24, 336 S.E.2d 488. Mechanics’ Liens 1

A mechanic’s lien arises, inchoate, under Section 29‑5‑10, when the labor is performed or the materials are furnished. Shelley Const. Co., Inc. v. Sea Garden Homes, Inc. (S.C.App. 1985) 287 S.C. 24, 336 S.E.2d 488.

Quoted in Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

Under this section and following sections, the instant the labor or material is furnished, the lien is created between the parties. Williamson v. Hotel Melrose (S.C. 1918) 110 S.C. 1, 96 S.E. 407. Mechanics’ Liens 166

2. Owners and ownership

One who contracts to purchase land, pays part of the price, and takes possession under his contract is an “owner” within this section. Ridgeway v. Broadway (S.C. 1912) 91 S.C. 544, 75 S.E. 132. Mechanics’ Liens 59

Definition of “owner,” see Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

A contract with one, who then owned all the stock of an incorporated bridge company, for repairs of the bridge gives a lien on it. Watson v. Columbia Bridge Co. (S.C. 1880) 13 S.C. 433.

3. Consent

Consent here means an agreement of legal force. Gray v Walker (1881) 16 SC 143; Geddes v Bowden (1883) 19 SC 1.

A landlord/owner or his agent may provide consent to tenant to make modifications to leased premises, so that the materialman may enforce a mechanic’s lien against landlord/owner; however, there must be an express or implied agreement about the specific work to be done, and a general lease provision allowing tenant to make repairs or improvements is not enough. F & D Elec. Contractors, Inc. v. Powder Coaters, Inc. (S.C. 2002) 350 S.C. 454, 567 S.E.2d 842. Mechanics’ Liens 63; Mechanics’ Liens 72; Mechanics’ Liens 73(7); Mechanics’ Liens 75(2)

Warehouse lessor did not give lessee consent to make improvements to warehouse, and thus electrical contractor could not enforce mechanic’s lien against lessor, as an express or implied agreement about the specific work to be done was required, but contractor did not establish that lessor gave lessee anything more than general consent to make improvements or that lessor had more than mere knowledge that the work was to be done; lessor’s agent was at the work site, but lease only contained general provision requiring lessee to pay for water, sewer, and gas, and it expressly provided that lessee was responsible for any alterations. F & D Elec. Contractors, Inc. v. Powder Coaters, Inc. (S.C. 2002) 350 S.C. 454, 567 S.E.2d 842. Mechanics’ Liens 73(7); Mechanics’ Liens 75(2)

A subcontractor had a mechanic’s lien pursuant to Section 29‑5‑10 against the owner of the building on which its work was being done where, at the time that additional work was approved by an employee of the contractor, the contractor was insolvent and the owner was paying all of the bills including the contractor’s payroll, thus raising the reasonable inference that it had taken over the construction job and simply hired the contractor’s employees to complete the job; as an agent of the owner, the contractor’s employee had the authority to bind the owner for the additional work. Stoudenmire Heating and Air Conditioning Co., Inc. v. Craig Bldg. Partnership (S.C.App. 1992) 308 S.C. 298, 417 S.E.2d 634.

Where defendant homeowners directed the installation of a new furnace in their home before plaintiff contractor commenced performance, defendants’ actions met the consent requirements of Section 29‑5‑10 et seq., even though the contractor, in good faith, misrepresented to defendant the nature and cost of the needed repairs. Rice & Santos, Inc. v. Jones (S.C. 1983) 279 S.C. 201, 305 S.E.2d 74. Mechanics’ Liens 73(1)

Genuine issue as to consent within meaning of Section 29‑5‑10 was presented by defendant homeowners’ assertion that contractor had told defendant wife that he was purchasing materials from plaintiff and that she could accompany him to plaintiff’s place of business to choose particular items, since such mere acquiescence to contractor’s decision, where homeowners’ latitude of choice extended only to colors to be selected, not whether items should be supplied by plaintiff, would not be sufficient to fulfill consent requirement of statute. C & B Co. v. Collins (S.C. 1977) 269 S.C. 688, 239 S.E.2d 725.

The word consent implies something more than mere acquiescence in a state of things already in existence. It implies an agreement to that which, but for the consent, could not exist, and in which the party consenting has a right to forbid. Guignard Brick Works v. Gantt (S.C. 1968) 251 S.C. 29, 159 S.E.2d 850. Mechanics’ Liens 73(1)

Use of materials by a contractor with knowledge that a previous contractor had not paid the supplier therefor did not constitute consent of the owner giving the supplier a right to a lien under the provisions of this section. Guignard Brick Works v. Gantt (S.C. 1968) 251 S.C. 29, 159 S.E.2d 850.

Definition of consent, see Metz v. Critcher (S.C. 1910) 86 S.C. 348, 68 S.E. 627.

Accepting benefits of contract with knowledge shows consent thereto. Builders’ Supply Co. v North Augusta Electric & Improv. Builders’ Supply Co. v. North Augusta Electric & Improvement Co. (S.C. 1905) 71 S.C. 361, 51 S.E. 231.

Mere knowledge of labor by agent of owner is not consent. Gray v. Walker (S.C. 1881) 16 S.C. 143.

4. Property subject to lien

A contractor who is engaged in building railroad is not entitled to mechanic’s lien under this section. Greenwood, A. & W. Ry. v. Strang, 1896, 77 F. 498.

Worker who performed lot clearing and removal of trees, roots, and ground debris could not attach mechanics’ lien to property, where work was completed for purpose of preparing land for landscaping, not in connection with erection, alteration, or repair of a building or structure. Skiba v. Gessner (S.C. 2007) 374 S.C. 208, 648 S.E.2d 605, rehearing denied. Mechanics’ Liens 42

Section 29‑5‑10 was sufficiently broad to encompass labor and materials for curbs, gutters, streets, a tennis court, and drainage facilities, which were not provided for any particular lot, but were essential to the owner’s development of his properties. Additionally, the lien would attach to the entire 43 acres which comprised the real estate development, rather than only the realty beneath the tennis courts, roads, curbs, gutters, and drainage facilities. A.V.A. Const. Corp. v. Santee Wando Const. (S.C.App. 1990) 303 S.C. 333, 400 S.E.2d 498.

Under Section 29‑5‑10, a mechanic’s lien cannot attach to land, or to an owner’s interest in land, where the work done is unconnected with and forms no integral part of the erection, alteration, or repair of either a building or a structure. Clo‑Car Trucking Co., Inc. v. Clifflure Estates of South Carolina, Inc. (S.C.App. 1984) 282 S.C. 573, 320 S.E.2d 51. Mechanics’ Liens 33(1); Mechanics’ Liens 33(3)

Where petitioner filed petition to foreclose mechanic’s lien on public school building, but had no lien because statutes did not authorize lien, statutes as to liens on lands and buildings for labor and material, under this section and following sections, were not applicable to relief, if any, to which petitioner was entitled. Atlantic Coast Lumber Corp. v. Morrison (S.C. 1929) 152 S.C. 305, 149 S.E. 243. Mechanics’ Liens 245(3)

Use of material in structure on property against which lien is claimed must appear in foreclosure petition. National Loan & Exchange Bank of Columbia v. Argo Development Co. (S.C. 1927) 141 S.C. 72, 139 S.E. 183. Mechanics’ Liens 271(1)

Lien upon a building and upon “the interest of the owner thereof in the lot of land upon which the same is situated” includes several adjoining lots enclosed by a common fence and used for the same purpose. Ex parte Davis (S.C. 1878) 9 S.C. 204. Mechanics’ Liens 183

5. Persons entitled to lien

This section does not give a lien to subcontractors. Kelly v Bank of State (1841) 16 SC Eq 431. Murray v Earle (1880) 13 SC 87. Gray v Walker (1881) 16 SC 143. Geddes v Bowden (1883) 19 SC 1.

Section 29‑5‑10 gives a mechanic’s lien to persons who by agreement or with the consent of the owner perform labor on or furnish materials in the erection of a structure. Such a lien is uneffected by the amount of the contract between the owner and the contractor. Ringer v. Graham (S.C.App. 1985) 286 S.C. 14, 331 S.E.2d 373.

A surveyor was not entitled to a lien for its services in subdividing land into smaller tracts and laying out roads, bridle paths, and drainage ditches, since such labor was not performed in the preparation of the location on which a building was to be placed within the meaning of Section 29‑5‑10, nor did it constitute an improvement to the real estate within the meaning of Section 29‑5‑20, notwithstanding an amendment subsequent to the work performed, by which the Legislature expressly extended the provisions of Section 29‑5‑20 to grant a mechanic’s lien to surveyors. George A.Z. Johnson, Jr., Inc. v. Barnhill (S.C. 1983) 279 S.C. 242, 306 S.E.2d 216.

6. Contract price

Items that are recoverable under the mechanic’s lien statute can include overhead and profit, but only in the limited situation where the terms of overhead and profit are agreed upon by the parties and are subsequently embodied within a contract. Zepsa Const., Inc v. Randazzo (S.C.App. 2004) 357 S.C. 32, 591 S.E.2d 29, rehearing denied. Mechanics’ Liens 163

Overhead and profit, when stated as part of the contract price, are proper components of a mechanic’s lien. Sentry Engineering and Const., Inc. v. Mariner’s Cay Development Corp. (S.C. 1985) 287 S.C. 346, 338 S.E.2d 631.

7. Elements of damages

Unliquidated damages for failure to complete the work in proper time may be set up as a defense to action under section. Spears v DuRant (1907) 76 SC 19, 56 SE 652. Tenney v Anderson Water, Light & P. Co. (1904) 69 SC 430, 48 SE 457.

Items that are recoverable under the mechanic’s lien statute can include overhead and profit, but only in the limited situation where the terms of overhead and profit are agreed upon by the parties and are subsequently embodied within a contract. Zepsa Const., Inc v. Randazzo (S.C.App. 2004) 357 S.C. 32, 591 S.E.2d 29, rehearing denied. Mechanics’ Liens 161(1)

Section 29‑5‑10 excludes rental charges for leased equipment when the equipment operators are not supplied by the lessor. Hardin Const. Group, Inc. v. Carlisle Const. Co. (S.C. 1990) 300 S.C. 456, 388 S.E.2d 794. Mechanics’ Liens 47

Mechanics’ lien may only secure a debt for labor performed or furnished, or for materials furnished and actually used, and may not be used for collection of a claim for damages for breach of contract. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

The determination of whether a claim made under a complicated construction contract was for services rendered or for damages for breach of contract is to be made by the jury. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

8. Setoff and counterclaim

No counterclaim, only setoff, can be interposed to proceedings to enforce lien. Tenney v Anderson Water, Light & P. Co. (1903) 67 SC 11, 45 SE 111. Gwynn v Citizens’ Tel. Co. (1904) 69 SC 434, 48 SE 460.

Contractor failed to raise below its claim that motel owner’s claim for cost of motel accommodations for contractor’s employees were improper subject for setoff and should not have been brought in contractor’s mechanic’s lien action, and thus issue was not properly before Supreme Court; in its reply to owner’s original answer, contractor simply stated that allegations relating to setoff required no response, and contractor did not object to evidence concerning value of motel accommodations. Brasington Tile Co., Inc. v. Worley (S.C. 1997) 327 S.C. 280, 491 S.E.2d 244, rehearing denied.

Sufficient mutuality existed, making motel accommodations provided by motel owner for contractor’s employees an appropriate subject for setoff against contractor’s recovery on mechanic’s lien; motel accommodations were provided to facilitate contractor’s performance of parties’ agreement for renovation of adjacent restaurant, even if not directly encompassed within terms of agreement, and agreement also encompassed change orders and similar requests, so that motel accommodations could be classified as part of entire agreement. Brasington Tile Co., Inc. v. Worley (S.C. 1997) 327 S.C. 280, 491 S.E.2d 244, rehearing denied.

For attorney fee purposes, setoffs and counterclaims should be considered in determination of prevailing party in mechanic’s lien action; where counterclaims and setoffs asserted in mechanic’s lien action are closely related to underlying controversy, controversy is, in actuality, one controversy with one judgment and one verdict. Brasington Tile Co., Inc. v. Worley (S.C. 1997) 327 S.C. 280, 491 S.E.2d 244, rehearing denied.

Mechanic’s lien attorney fee statute does not make provision for considering counterclaims as negative offers of settlement for purposes of determining who is prevailing party; rather, statute provides that, when neither party makes written offer of settlement, plaintiff’s offer is considered amount prayed for in its complaint and defendant’s offer is considered to be zero. Brasington Tile Co., Inc. v. Worley (S.C. 1997) 327 S.C. 280, 491 S.E.2d 244, rehearing denied.

In an action to foreclose a mechanic’s lien, the master‑in‑equity did not err in awarding an offset for defective arches, even though such defect was not specifically pleaded in the homeowner’s counterclaim, where the counterclaim alleged that “in addition to the enumerated problems above, there are other problems which should and need to be corrected by the Plaintiff,” and the arches constituted an integral part of the building. Watson & Howell Builders v. Billingsley (S.C.App. 1992) 310 S.C. 39, 425 S.E.2d 43.

9. Waiver; release

A genuine issue of material fact existed as to whether a contractor’s acceptance of a homeowner’s check was an accord and satisfaction, even though the check stated both on its front and back that it was “final payment,” where the contractor testified that (1) the homeowner refused to pay the additional costs claimed even before he could explain them, (2) he agreed only to discuss the disputed amounts with the architect before resubmitting the bill to the homeowner, and (3) he denied accepting the check as a full payment; thus, the evidence did not show a meeting of the minds regarding the nature of the payment. Tremont Const. Co., Inc. v. Dunlap (S.C.App. 1992) 310 S.C. 180, 425 S.E.2d 792, rehearing denied, certiorari denied.

Where, at the request of the materialman, a general contractor makes the materialman and a subcontractor joint payees on a check for labor and materials furnished, and there is no agreement as to the allocation of the proceeds, the materialman, by endorsing the check, will be deemed to have been paid the money due him to the amount of the joint check. Glidden Coatings & Resins, Div. of SCM Corp. v. Suitt Const. Co., Inc. (S.C.App. 1986) 290 S.C. 240, 349 S.E.2d 89. Mechanics’ Liens 115(5)

The mechanic’s lien statute does not alter the joint check rule; the rule applies whether the materialman sues to foreclose a statutory materialman’s lien, sues on a payment or performance bond, or sues directly on the contract with the owner or general contractor. Glidden Coatings & Resins, Div. of SCM Corp. v. Suitt Const. Co., Inc. (S.C.App. 1986) 290 S.C. 240, 349 S.E.2d 89. Mechanics’ Liens 115(1); Mechanics’ Liens 209; Mechanics’ Liens 315

A default in payments on an installment contract to purchase land, and the subsequent release of the vendee’s interest to the property to the vendor, which occurred after labor and materials for a barn built upon the land had been furnished, did not affect the vested mechanics lien rights that arose inchoate when the materials and labor were furnished. Southern Pole Bldgs., Inc. v. Williams (S.C.App. 1986) 289 S.C. 521, 347 S.E.2d 121. Mechanics’ Liens 168; Mechanics’ Liens 170

Lien may be waived by mechanic. Murray v. Earle (S.C. 1880) 13 S.C. 87.

10. Costs and attorney fees; prevailing party

Statutory limit on the attorney fee award for prevailing party in mechanic’s lien case applies not only to a party prevailing in enforcing a lien, but also to a party prevailing in defending the lien action. Mozingo & Wallace Architects, L.L.P. v. Grand (S.C.App. 2008) 379 S.C. 478, 666 S.E.2d 267, rehearing denied, certiorari denied. Mechanics’ Liens 310(3)

Statute stating fee and court costs could not exceed the amount of mechanic’s lien allowed court to reduce prevailing architect’s attorney fees to the principal debt recited in the notice and certificate of lien against property owner; allowing party enforcing lien to recover higher fees would not be reasonable because that party could add prejudgment interest to the lien award. Mozingo & Wallace Architects, L.L.P. v. Grand (S.C.App. 2008) 379 S.C. 478, 666 S.E.2d 267, rehearing denied, certiorari denied. Mechanics’ Liens 310(3)

Homeowner was the prevailing party entitled to attorney fees and costs under prior statute on determining who was the prevailing party entitled to attorney fees and costs in action to foreclose mechanic’s lien; homeowner’s settlement offer was zero, not amount of counterclaim, and builder’s recovery was closer to zero than to prayer for relief. JRS Builders, Inc. v. Neunsinger (S.C. 2005) 364 S.C. 596, 614 S.E.2d 629. Mechanics’ Liens 310(1)

Amended statute on determining prevailing party entitled to attorney fees and costs in action to foreclose mechanic’s lien applied prospectively only and could not apply retrospectively, since retroactive application would overrule Supreme Court case and legislature lacked authority to overrule a Supreme Court decision. JRS Builders, Inc. v. Neunsinger (S.C. 2005) 364 S.C. 596, 614 S.E.2d 629. Constitutional Law 2384; Mechanics’ Liens 7

Determination as to amount of attorney fees which should be awarded under mechanic’s lien statute is addressed to sound discretion of trial court and its decision will not be disturbed absent abuse of discretion. Seckinger v. Vessel Excalibur (S.C.App. 1997) 326 S.C. 382, 483 S.E.2d 775, rehearing denied, certiorari denied. Appeal And Error 984(5); Mechanics’ Liens 310(2)

Definition of “prevailing party” found in statute intended to foster settlement was not applicable for purpose of attorney fee award, where plaintiff’s written settlement offer did not state it was made under that statute, it was not filed with the court, and no other written offers were made during course of proceedings. Seckinger v. Vessel Excalibur (S.C.App. 1997) 326 S.C. 382, 483 S.E.2d 775, rehearing denied, certiorari denied. Costs 194.50

In an action for foreclosure of a mechanic’s lien, unjust enrichment, and breach of contract, the trial court’s award of attorney’s fees pursuant to the mechanic’s lien statutes was excessive where the defendant was awarded attorney’s fees incurred which included the cost of defending the claims of unjust enrichment and breach of contract, as well as the cost of defending against the mechanic’s lien. Utilities Const. Co., Inc. v. Wilson (S.C.App. 1996) 321 S.C. 244, 468 S.E.2d 1.

The trial court did not err in awarding the defendant attorney’s fees upon her successful defense of an action arising from a mechanic’s lien even though the defendant did not request such fees in her answer where the plaintiff did not object to the award of fees at the trial court level; even if the issue had been properly raised, the plaintiff would have had notice of the potential for an award of attorney’s fees given the mandatory language of the mechanics’ lien statutes. Utilities Const. Co., Inc. v. Wilson (S.C.App. 1996) 321 S.C. 244, 468 S.E.2d 1.

In an action for foreclosure of a mechanic’s lien, unjust enrichment, and breach of contract, the trial court did not err in awarding the defendant attorney’s fees under the mechanics’ lien statutes even though the plaintiff/contractor was the prevailing party on the jury verdict where the court directed a verdict in favor of the defendant on the mechanic’s lien cause of action, and consequently, the jury verdict did not encompass an award under the mechanics’ lien statutes; under the mechanics’ lien statute, a party is entitled to recover attorney’s fees if she prevails in defending against the lien. Utilities Const. Co., Inc. v. Wilson (S.C.App. 1996) 321 S.C. 244, 468 S.E.2d 1.

The intent of the Legislature in allowing the prevailing party in an action brought under a mechanics’ lien statute to recover attorney’s fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to the mechanics’ liens. Cedar Creek Properties v. Cantelou Associates, Inc. (S.C.App. 1995) 320 S.C. 483, 465 S.E.2d 774. Mechanics’ Liens 310(2); Mechanics’ Liens 310(3)

A property owner on whose property a mechanics’ lien had been filed was a prevailing party, and therefore could recover attorney’s fees where the lienholder canceled the lien only after the property owner instituted an action to have the lien dissolved. Cedar Creek Properties v. Cantelou Associates, Inc. (S.C.App. 1995) 320 S.C. 483, 465 S.E.2d 774.

In an action on a mechanics lien arising from Section 29‑5‑10, the right to attorney’s fees is governed by Section 29‑5‑10 as opposed to Section 29‑5‑20. T.W. Morton Builders, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 87.

The master erred in failing to award attorney’s fees to a prevailing party in an action to foreclose on a mechanics lien even though the master found that litigation was inevitable as a result of the poor practices of both parties; under Section 29‑5‑10, an award of attorney’s fees to the contractor was mandatory. T.W. Morton Builders, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 87.

In order to protect private contractors who deal directly with an owner, “may” as used in Section 29‑5‑10 should be interpreted to mean that costs, to include a reasonable attorney’s fee, shall be secured by the mechanics’ lien, as in the case of Section 29‑5‑20; because Section 29‑5‑10 refers to a “reasonable attorney’s fee,” and because it also states that the “fee must be determined by the court,” the amount of the fee awarded is left to the sound discretion of the court, subject to the guidance set forth in Section 29‑5‑10 as to who is the prevailing party. T.W. Morton Builders, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 87.

The Circuit Court had jurisdiction to determine the issue of attorney’s fees under the mechanics’ liens statute (Section 29‑5‑10) where a remittitur was sent down from the Supreme Court following appeal. Muller v. Myrtle Beach Golf and Yacht Club (S.C. 1993) 313 S.C. 412, 438 S.E.2d 248. Appeal And Error 1207(3)

The allowance of attorneys’ fees under Section 29‑5‑10 to prevailing claimants in a mechanics’ lien action but not to prevailing defendants is an unconstitutional denial of equal protection to the defendants. Southeastern Home Bldg. & Refurbishing, Inc. v. Platt (S.C. 1985) 283 S.C. 602, 325 S.E.2d 328.

11. Determination of prevailing party

Builder was the prevailing party in mechanic’s lien action, for purposes of award of attorney fees, though builder made a written offer of settlement of $40,000 and was only ultimately awarded $10,864, where landowners counterclaimed for $88,000, landowners never made an offer of settlement, and thus builder’s offer was closer to the ultimate award to the builder. Zepsa Const., Inc v. Randazzo (S.C.App. 2004) 357 S.C. 32, 591 S.E.2d 29, rehearing denied. Mechanics’ Liens 310(1)

If plaintiff files and serves offer of settlement invoking statute intended to foster settlements, and defendant makes no written offer, zero is deemed to have been defendant’s response for purposes of identifying the prevailing party entitled to attorney fees; conversely, if defendant makes a written offer of settlement meeting formal requirements of statute, and plaintiff fails to respond in writing, amount prayed for in complaint is deemed to have been the response for purpose of identifying prevailing party. Seckinger v. Vessel Excalibur (S.C.App. 1997) 326 S.C. 382, 483 S.E.2d 775, rehearing denied, certiorari denied. Costs 194.50

In an action to foreclose a mechanics’ lien by a materialman, the master did not err in awarding the general contractor attorney’s fees, although the materialman argued that the general contractor was not a party to the action, where the general contractor filed a bond discharging that property from the lien and defended the action against the owner; by filing a bond pursuant to Section 29‑5‑110 to release the property subject to the materialman’s lien and providing the owner’s defense, the general contractor assumed the owner’s position in the case. Maddux Supply Co., Inc. v. Safhi, Inc. (S.C.App. 1994) 316 S.C. 404, 450 S.E.2d 101.

12. Arbitration awards, attorney fees

Arbitrator’s award of attorney fees in favor of general contractor as prevailing party pursuant to mechanic’s lien statute was neither arbitrary nor capricious and did not demonstrate manifest disregard for the law, and thus award could not be vacated, even though general contractor moved to amend its pleadings to recognize credits claimed by homeowners on first day of arbitration; it was within arbitrator’s discretion to allow general contractor to amend pleadings. C‑Sculptures, LLC v. Brown (S.C.App. 2011) 394 S.C. 519, 716 S.E.2d 678, rehearing denied, certiorari granted, reversed 403 S.C. 53, 742 S.E.2d 359. Alternative Dispute Resolution 324; Alternative Dispute Resolution 329

Arbitrator, when declining to award attorney fees to mechanic’s lien holder in its contract dispute with homeowners, did not manifestly disregard the law by failing to apply mechanic’s lien statute as amended, and thus Circuit Court was not justified in modifying award to find that lien holder was prevailing party and thereby entitled to attorney fees. Lauro v. Visnapuu (S.C.App. 2002) 351 S.C. 507, 570 S.E.2d 551, rehearing denied, certiorari denied. Alternative Dispute Resolution 329

Arbitrator, when declining to award attorney fees to mechanic’s lien holder in its contract dispute with homeowners, did not manifestly disregard the law when changing lien holder’s settlement offer under mechanic’s lien statute from $177,352 to $197,560, and thus Circuit Court was not justified in modifying award to find that lien holder was prevailing party and thereby entitled to attorney fees; statute authorized arbitrator to use the revised figure based on the demand in lien holder’s foreclosure complaint, and arbitrator revisited the issue because lien holder sought to modify award. Lauro v. Visnapuu (S.C.App. 2002) 351 S.C. 507, 570 S.E.2d 551, rehearing denied, certiorari denied. Alternative Dispute Resolution 329

In an action to enforce an arbitration award by foreclose of a mechanics lien against the owner, the circuit court improperly denied the contractor attorney fees for the arbitration itself and for proceedings in the circuit court, even where the request for attorney fees was first raised in the circuit court; the consent order directing arbitration did not bar the contractor from subsequently seeking attorney fees where the consent order merely directed arbitration under the contract between the parties and not on all issues. Stanley Smith & Sons, Inc. v. Dumas (S.C.App. 1993) 315 S.C. 30, 431 S.E.2d 595.

13. Maritime lien statutes, attorney fees

Although maritime lien statute does not expressly provide for recovery of attorney fees, plain meaning of language of statute is that proceedings for enforcement of maritime lien are the same as those set forth in statute for enforcement of liens on buildings and lands, including provision for award of attorney fees to prevailing party. Seckinger v. Vessel Excalibur (S.C.App. 1997) 326 S.C. 382, 483 S.E.2d 775, rehearing denied, certiorari denied. Admiralty 121

**SECTION 29‑5‑15.** Filing requirements; penalty for frivolous lien.

(A) To file a mechanics’ lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.

HISTORY: 2009 Act No. 40, Section 2, eff June 2, 2009.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 9, General Requirements.

**SECTION 29‑5‑20.** Lien of laborer, mechanic, subcontractor or materialman; limits on aggregate amount of liens filed by sub‑subcontractor or supplier; limits on total aggregate amount of liens; exceptions; settlement of action to enforce lien.

(A) Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney’s fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney’s fee as determined by the court. The fee and the court costs may not exceed the amount of the lien. The lien may be enforced as herein provided.

(B) In no event shall the aggregate amount of any liens filed by a sub‑subcontractor or supplier exceed the amount due by the contractor to the subcontractor to whom the sub‑subcontractor or supplier has supplied labor, material, or services unless the sub‑subcontractor or supplier has provided notice of furnishing labor or materials by certified or registered mail to the contractor. Such notice of furnishing labor or materials shall include:

(1) the name of the sub‑subcontractor or supplier who claims payment;

(2) the name of the person with whom the claimant contracted or by whom he was employed;

(3) a description of the labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated by a person other than the one giving notice and the contract price or value thereof shall be separately stated in the notice;

(4) a description of the project where labor, services, or materials were used sufficient for identification;

(5) the date when the first and the last item of labor or service or materials was actually furnished or scheduled to be furnished; and

(6) the amount claimed to be due, if any.

After receiving such notice, no payment by the contractor to the subcontractor will lessen the amount recoverable by the person so giving notice. However, in no event shall the total aggregate amount of liens on the improvement exceed the amount due by the owner.

(C) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer supersedes any offer previously made under this section by the same party.

An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer five days before the commencement of the term.

If the offer or amended offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under this section.

For purposes of the award of attorney’s fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic’s lien and the consideration of compulsory counterclaims. The party whose offer of settlement is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney’s fees. If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement.

If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement. If the defendant has not asserted a counterclaim, his offer of settlement is considered to be zero.

(D) Subsection (B) does not apply to individual laborers when the amount of their lien is less than two thousand dollars.

HISTORY: 1962 Code Section 45‑252; 1952 Code Section 45‑252; 1942 Code Section 8728; 1932 Code Section 8728; Civ. C. ‘22 Section 5640; Civ. C. ‘12 Section 4114; Civ. C. ‘02 Section 3009; R. S. 2466; 1896 (22) 197; 1916 (29) 686; 1973 (58) 80; 1986 Act No. 408, Section 2; 1992 Act No. 368, Section 1; 1995 Act No. 140, Section 1; 1999 Act No. 83, Section 2.

CROSS REFERENCES

Bond and security, see Section 11‑35‑3030.

Contractors’ bonds, amounts and actions thereon, see Section 57‑5‑1660.

Lien coverage as including reasonable rental value of tools, appliances, machinery, and equipment supplied for improvement of real estate, see Section 29‑5‑22.

Location notice that Notice of Project Commencement has been filed must contain statement that sub‑subcontractors and suppliers must comply with this section when filing liens, see Section 29‑5‑23.

Person providing private security guard services at site of real estate site improvement being a laborer within the meaning of this section, see Section 29‑5‑25.

Suit on payment bond, see Section 29‑5‑440.

Suits on payment bonds, remote claimants, see Section 11‑1‑120.

Library References

Mechanics’ Liens 94, 162, 310.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 105 to 106, 116, 198 to 200, 432 to 436.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 165, What Types of Questions Can be Certified.

S.C. Jur. Attorney Fees Section 63, Mechanics’ Liens.

S.C. Jur. Attorney Fees Section 76, Size of Judgment as Not a Limiting Factor.

S.C. Jur. Costs Section 53.1, Mechanics’ Liens.

S.C. Jur. Mechanics’ Liens Section 3, Purpose and Theory.

S.C. Jur. Mechanics’ Liens Section 10, Amount Secured by Lien.

S.C. Jur. Mechanics’ Liens Section 11, General Requirements.

S.C. Jur. Mechanics’ Liens Section 12, Limitation and Exception Applicable to Subcontractor.

S.C. Jur. Mechanics’ Liens Section 13, Labor.

S.C. Jur. Mechanics’ Liens Section 15, Persons Served.

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

S.C. Jur. Mechanics’ Liens Section 23, Waiver.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Practice and Procedure. 38 S.C. L. Rev. 162, Autumn, 1986.

Joint check rule recognized. 39 S.C. L. Rev. 11, Autumn, 1987.

Mechanics’ Liens in South Carolina. 25 S.C. L. Rev. 817.

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

Attorney fees 3

Existing liens 2

1. In general

The manifest twofold purpose of this section and what is now Section 29‑5‑40 is (1) the protection of one not a party to a contract with the owner, who furnishes labor or material in the improvement of the owner’s property, by giving him a lien for such labor or material; and (2) the protection of the property owner by limiting his liability and that of his property in respect to all such liens to the amount due by the owner on the contract price of the improvement made. Lowndes Hill Realty Co. v Greenville Concrete Co. (1956) 229 SC 619, 93 SE2d 855. Wood v Hardy (1959) 235 SC 131, 110 SE2d 157.

Cited in Builders’ Supply Co. v North Augusta Electric & Improv. Co. (1905) 71 SC 361, 51 SE 231. Ulmer v Phoenix Fire Ins. Co. (1901) 61 SC 459, 39 SE 712. Willoughby v City Council of Florence (1898) 51 SC 462, 29 SE 242.

An independent contractor is not a laborer within the meaning of this section. Malcomson v. Wappoo Mills, 1898, 85 F. 907.

Subcontractor hired to crush concrete found on developers’ property into usable material was a laborer that performed work for the improvement of real estate, as required for subcontractor to be entitled to mechanic’s lien, where subcontractor was hired to rid property of demolition debris so construction could continue and to convert concrete blocks into fragments that could be used in paving property, subcontractor rented equipment and provided all labor, fuel, and supervision, and subcontractor performed work which was necessary to development project and generated a product used to improve property. Greens of Rock Hill, LLC v. Rizon Commercial Contracting, Inc. (S.C.App. 2014) 411 S.C. 152, 766 S.E.2d 876, certiorari denied. Mechanics’ Liens 23

Legislative intent of the mechanic’s lien statute is that a person who performs a component of the work involved in development and construction projects should be considered a laborer that performed work for the improvement of real estate. Greens of Rock Hill, LLC v. Rizon Commercial Contracting, Inc. (S.C.App. 2014) 411 S.C. 152, 766 S.E.2d 876, certiorari denied. Mechanics’ Liens 81

Legislature has expanded the scope of the mechanic’s lien statute to cover persons performing a component of the labor necessary to complete construction and development projects, even though the labor performed does not go into something which has attached to and become a part of the real estate. Greens of Rock Hill, LLC v. Rizon Commercial Contracting, Inc. (S.C.App. 2014) 411 S.C. 152, 766 S.E.2d 876, certiorari denied. Mechanics’ Liens 23

Purpose of the mechanic’s lien statute is to protect a party who provides labor or materials for the improvement of property but does not have a contractual relationship with the property owner. Greens of Rock Hill, LLC v. Rizon Commercial Contracting, Inc. (S.C.App. 2014) 411 S.C. 152, 766 S.E.2d 876, certiorari denied. Mechanics’ Liens 5

Under the mechanic’s lien statutes, once the owner of a building or structure receives notice that a supplier is furnishing labor or materials for improvements to the building or structure, the owner makes any subsequent payments to the contractor at its own peril. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 115(4)

A supplier’s mechanic’s lien is limited to the amount of the unpaid balance owed to the contractor by the owner of the building or structure at the time at which the owner receives notice that the supplier is furnishing labor or materials for improvements to the building or structure. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 164(1)

Materials supplier followed statutory procedures to establish mechanic’s lien on improvements in data center, in the amount of unpaid balance of contract between data center owner and its contractor as of the date on which owner received notice that supplier was furnishing materials for improvements to data center, upon which lien supplier could maintain foreclosure action against owner; although notice of furnishing was given by supplier prior to furnishing all of the materials and did not make demand for payment of a specific amount, supplier provided separate lien notice that did include demand for payment of a specific amount after it actually furnished all of the materials and its invoices became delinquent, and supplier provided both notices prior to serving and filing its complaint for foreclosure of lien and lis pendens. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99; Mechanics’ Liens 118; Mechanics’ Liens 249

If a supplier furnishing labor or materials for improvements to a building or structure was employed by someone other than the owner of the building or structure, for a mechanic’s lien to attach to the improvements, the supplier must give written notice to the owner of the furnishing of the labor or materials. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99

Mechanic’s Lien statute does not require a subcontractor to settle or be forced to receive a prorated judgment as long as the aggregate amount of the liens do not exceed the amount due by the property owner to the general contractor on the contract price, and thus a trial court need only consider whether a prior settlement agreement with other subcontractors decreases the property owner’s contract liability to an amount smaller than the litigated lien. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 115(1)

Main purposes of statutes governing mechanic’s liens of laborers and requiring notice to property owner before lien asserted by party who did not contract with owner attaches are (1) the protection through a lien of a party, who furnished labor or material but was not a party to a contract with the owner, and (2) the protection of the owner by preventing his liability on the liens from exceeding the amount owner owes on the contract price. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 3

A subcontractor was not precluded from seeking, pursuant to Section 29‑5‑20, payment from the owner of the building on which its work was being done, even though the owner had already paid more than the contract price by the time the subcontractor filed his notice of lien, where prior to the overpayment the subcontractor had sent a letter to the owner indicating the work performed and demanding payment, thus providing sufficient written notice of its claim to fulfill the requirements of Section 29‑5‑40. Stoudenmire Heating and Air Conditioning Co., Inc. v. Craig Bldg. Partnership (S.C.App. 1992) 308 S.C. 298, 417 S.E.2d 634.

What are now Sections 29‑5‑40 and 29‑5‑90 set forth the procedure for perfection of the lien created by this section. To enforce it, suit must be brought to foreclose within the six month period prescribed by what is now Section 29‑5‑120. Fulmer Bldg. Supplies, Inc. v. Martin (S.C. 1968) 251 S.C. 353, 162 S.E.2d 541.

The materialman’s lien, or rather his right to a lien, arises inchoate when the material is furnished. Lowndes Hill Realty Co. v Greenville Concrete Co. (1956) 229 SC 619, 93 SE2d 855. Wood v. Hardy (S.C. 1959) 235 S.C. 131, 110 S.E.2d 157.

Additional related case, see Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

2. Existing liens

A subcontractors’ mechanics’ lien is subject to existing liens of which the subcontractor has actual or constructive notice. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

A subcontractors’ lien is subject to the lien of a construction loan secured by a recorded mortgage. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

3. Attorney fees

The award of attorney’s fees to a party defending against a mechanic’s lien is left undisturbed absent abuse of the circuit court’s discretion. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 309

Trial court’s award of attorney fees and costs to data center owner in the amount of $14,472.55 did not constitute an abuse of discretion; owner was required to defend against material supplier’s mechanic’s lien action, fees incurred by data center were reasonable in light of the nature of the work performed, particularly when counsel was required to research and address novel legal issues with regard to mechanic’s lien, owner obtained a beneficial result when the trial court granted summary judgment in its favor and dissolved the lien, and the fee and court costs did not exceed the amount of the lien as required by statute. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 310(3)

The amount of attorney’s fees that should be awarded under the mechanic’s lien statute is within the sound discretion of the circuit court; the circuit court’s decision regarding such a matter will not be disturbed absent an abuse of discretion. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 309; Mechanics’ Liens 310(3)

For purposes of statute providing attorney fees for prevailing party in action to enforce mechanic’s lien, the “prevailing party” is the one who receives a favorable decision or verdict on liability. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 310(1)

For purposes of statute allowing award of attorney fees to prevailing party in action to enforce mechanic’s lien, subcontractor was “prevailing party,” although action was being remanded to trial court concerning award of interest; subcontractor received favorable verdict regarding liability. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 310(1)

A party may recover attorney’s fees and costs under mechanic’s lien statute as a “prevailing party” even though the party obtained a dismissal via a procedural rule, provided the dismissal was not due to mere technicality. Code 1976, Sections 29‑5‑20(A). Keeney’s Metal Roofing, Inc. v. Palmieri (S.C.App. 2001) 345 S.C. 550, 548 S.E.2d 900, rehearing denied, certiorari denied. Mechanics’ Liens 310(1)

Mechanic’s lien statute requires the court to award reasonable attorney’s fees and costs to the party defending against the mechanic’s lien if the defending party prevails in the action. Keeney’s Metal Roofing, Inc. v. Palmieri (S.C.App. 2001) 345 S.C. 550, 548 S.E.2d 900, rehearing denied, certiorari denied. Mechanics’ Liens 310(1)

The trial court did not err in awarding the defendant attorney’s fees upon her successful defense of an action arising from a mechanic’s lien even though the defendant did not request such fees in her answer where the plaintiff did not object to the award of fees at the trial court level; even if the issue had been properly raised, the plaintiff would have had notice of the potential for an award of attorney’s fees given the mandatory language of the mechanics’ lien statutes. Utilities Const. Co., Inc. v. Wilson (S.C.App. 1996) 321 S.C. 244, 468 S.E.2d 1.

In an action on a mechanics lien arising from Section 29‑5‑10, the right to attorney’s fees is governed by Section 29‑5‑10 as opposed to Section 29‑5‑20. T.W. Morton Builders, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 87.

With regard to the award of attorney’s fees in an action to foreclose on a mechanics’ lien, there is no indication that the legislature, by amending Sections 29‑5‑10 and 29‑5‑20, intended to provide disparate treatment for prevailing mechanics and suppliers who deal directly with the owner under Section 29‑5‑10 and prevailing mechanics and suppliers who furnish labor or material through a contractor under Section 29‑5‑20; such a scheme would have no rational basis in fact and would create the same kind of unequal treatment the amendment was meant to cure. T.W. Morton Builders, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 87.

In order to protect private contractors who deal directly with an owner, “may” as used in Section 29‑5‑10 should be interpreted to mean that costs, to include a reasonable attorney’s fee, shall be secured by the mechanics’ lien, as in the case of Section 29‑5‑20; because Section 29‑5‑10 refers to a “reasonable attorney’s fee,” and because it also states that the “fee must be determined by the court,” the amount of the fee awarded is left to the sound discretion of the court, subject to the guidance set forth in Section 29‑5‑10 as to who is the prevailing party. T.W. Morton Builders, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 87.

In an action to enforce a mechanics lien, an attorney’s fee equal to the amount of the underlying lien was properly awarded to the prevailing defendant where the defendant’s attorney provided a detailed affidavit itemizing her time, expenses, and qualifications and the trial court properly considered the factors requisite to an award of attorney’s fees. Trico Surveying, Inc. v. Godley Auction Co., Inc. (S.C. 1993) 314 S.C. 542, 431 S.E.2d 565.

The allowance of attorneys’ fees under Section 29‑5‑20 to prevailing claimants in a mechanics’ lien action but not to prevailing defendants is an unconstitutional denial of equal protection to the defendants. Southeastern Home Bldg. & Refurbishing, Inc. v. Platt (S.C. 1985) 283 S.C. 602, 325 S.E.2d 328.

**SECTION 29‑5‑21.** Services of surveyor and real estate licensee as improving real estate; real estate licensee’s liens.

(A) A surveyor who surveys real estate by virtue of an agreement with the owner of such real estate has furnished material for the improvement of real estate within the meaning of Section 29‑5‑20.

(B)(1) A real estate licensee who, by virtue of a written agreement with the owner, performs professional services for which he is licensed under Title 40 incident to marketing, developing, or improving commercial real estate preparatory to or as a part of a commercial real estate lease or rental transaction involving the commercial real estate, has furnished labor or material for the improvement of commercial real estate within the meaning of Section 29‑5‑20.

(2) A real estate licensee shall not acquire a lien under this subsection unless:

(a) the owner of the commercial real estate or the owner’s authorized agent authorizes the real estate licensee, under the terms of a written agreement, to lease an interest in the commercial real estate; and

(b) the real estate licensee or the real estate licensee’s affiliated licensees provide licensed services that result, during the term of a written agreement described in item (1) of this subsection, in the procuring of a person or entity that rents or leases the commercial real estate or rents or leases an interest in the commercial real estate upon terms contained in a written agreement described in item (1) of this subsection.

(3) A real estate licensee shall not acquire a lien under this subsection upon residential real estate.

(4) Prior recorded liens shall have priority over a real estate licensee’s lien. A prior recorded lien shall include, without limitation:

(i) a valid mechanic’s lien claim that is recorded subsequent to the real estate licensee’s lien notice of lien but which relates back to a date prior to the recording date of the real estate licensee’s lien notice of lien; and

(ii) prior recorded liens securing revolving credit and future advance of construction loans as described in Section 29‑3‑50.

HISTORY: 1978 Act No. 465, Section 1; 2006 Act No. 263, Section 1, eff May 2, 2006.

Effect of Amendment

The 2006 amendment designated subsection (A) and added subsection (B) relating to real estate licensees.

Library References

Mechanics’ Liens 45.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 37 to 42, 46.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Architects and Engineers Section 35, Mechanics’ Lien.

S.C. Jur. Mechanics’ Liens Section 13, Labor.

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In general 1

1. In general

A vendor’s property was not subject to the mechanics lien of a surveyor where the purchaser of the property commissioned the survey and then subsequently defaulted on the contract to purchase; the vendor’s permission to the purchaser to survey the property did not constitute an agreement between the vendor and the surveyor as contemplated by the mechanics lien statute, Section 29‑5‑21. Trico Surveying, Inc. v. Godley Auction Co., Inc. (S.C. 1993) 314 S.C. 542, 431 S.E.2d 565.

A surveyor was not entitled to a lien for its services in subdividing land into smaller tracts and laying out roads, bridle paths, and drainage ditches, since such labor was not performed in the preparation of the location on which a building was to be placed within the meaning of Section 29‑5‑10, nor did it constitute an improvement to the real estate within the meaning of Section 29‑5‑20, notwithstanding an amendment subsequent to the work performed, by which the Legislature expressly extended the provisions of Section 29‑5‑20 to grant a mechanic’s lien to surveyors. George A.Z. Johnson, Jr., Inc. v. Barnhill (S.C. 1983) 279 S.C. 242, 306 S.E.2d 216.

**SECTION 29‑5‑22.** Reasonable rental value of tools, appliances, machinery, and equipment.

A person who supplies tools, appliances, machinery, or equipment used as provided in Section 29‑5‑10(a) is considered to have furnished material for the improvement of real estate within the meaning of Sections 29‑5‑20 and 29‑5‑40 to the extent of the reasonable rental value of the tools, appliances, machinery, or equipment for the period of actual use.

HISTORY: 1990 Act No. 374, Section 1.

Library References

Mechanics’ Liens 47.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 13, Labor.

NOTES OF DECISIONS

In general 1

1. In general

A subcontractor cannot claim a mechanic’s lien under Section 29‑5‑20 for rental charges on leased equipment used in construction when the lessor does not supply the equipment operators. Hardin Const. Group, Inc. v. Carlisle Const. Co. (S.C. 1990) 300 S.C. 456, 388 S.E.2d 794. Mechanics’ Liens 47

**SECTION 29‑5‑23.** Notice of Project Commencement; location notice; failure to file notice.

Any person entering into a direct agreement with, or with the consent of, an owner for the improvement of real property may file with the clerk of court or register of deeds in the county or counties where the real property is situate a notice of project commencement. The notice of project commencement shall contain the following information:

(1) the name and address of the person filing the notice of commencement;

(2) the name and address of the owner or developer;

(3) a general description of the improvement; and

(4) the location of the project.

The notice must be filed within fifteen days of the commencement of work and must be accompanied by a filing fee of fifteen dollars to be deposited in that county’s general fund. The name and address of the contractor must be posted at the job site. A location notice also must be posted at the job site. The location notice must contain the following statement: “The contractor on the project has filed a notice of project commencement at the county courthouse. Sub‑subcontractors and suppliers to subcontractors shall comply with Section 29‑5‑20 when filing liens in connection with this project.” The failure to file a notice of project commencement shall render the provisions of Sections 29‑5‑20(B) and 29‑5‑60(B) inapplicable. The failure to file a notice of project commencement shall also render the provisions of Sections 29‑5‑440, 11‑35‑3030(2)(c), 57‑5‑1660(b), and 11‑1‑120, relating to the requirement of a notice of providing labor, materials, or rental equipment inapplicable for a claim against a payment bond furnished by a contractor holding a direct contractual agreement with an owner. The filing of a notice of project commencement shall not constitute a cloud, lien, or encumbrance upon, or defect to, the title of the real property described in the notice, nor shall it alter the aggregate amounts of liens allowable under Section 29‑5‑40, nor shall it affect the priority of any mortgage filed before or after the notice, nor shall it affect any future advances under any mortgage. The clerk of court or register of deeds in each county shall maintain a separate book and index of all notices of project commencements.

HISTORY: 1992 Act No. 368, Section 3; 1997 Act No. 34, Section 1; 2000 Act No. 240, Section 5.

Editor’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

Library References

Mechanics’ Liens 94.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 105 to 106, 116.

**SECTION 29‑5‑25.** Private security guard services at site of real estate improvement.

Any person providing private security guard services at the site of the real estate during its improvement shall be deemed to be a laborer within the meaning of Sections 29‑5‑20 and 29‑5‑40. “Person” as used in this section shall mean any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or other such entity.

HISTORY: 1976 Act No. 524, Section 2.

Library References

Mechanics’ Liens 39.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 13, Labor.

**SECTION 29‑5‑26.** Landscape services.

(A) A person who provides a landscape service on a parcel of real estate, which service exceeds five thousand dollars, by virtue of a written agreement with the owner of the real estate and to whom a debt is due for his performance of the landscaping service has a mechanics’ lien on the real estate to secure payment of debt due to him as provided by Section 29‑5‑10 and Section 29‑5‑20. The lien attaches to the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

(1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;

(2) provision or installation, or both of them, of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan or site design; or

(3) both.

(C) A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure.

HISTORY: 2009 Act No. 40, Section 1, June 2, 2009.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 13, Labor.

**SECTION 29‑5‑27.** Laborer and person defined.

Any person providing construction and demolition debris disposal services, as defined in Section 44‑96‑40(6), including, but not limited to, final disposal services provided by a construction and demolition landfill, is a laborer within the meaning of Sections 29‑5‑20 and 29‑5‑40. “Person” as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or another entity.

HISTORY: 2003 Act No. 51, Section 23.

Library References

Mechanics’ Liens 39.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 31.

**SECTION 29‑5‑30.** Lien against debtor with life estate or whose estate is less than fee simple.

If the person for whom the work is done or materials are furnished has an estate for life or any other estate less than a fee simple in the land or if the property, at the time of recording the statement, is mortgaged or under any other encumbrance, the lien before provided for shall bind his whole estate and interest therein in like manner as a mortgage would have done and the creditor may cause the right of redemption or whatever other right or estate the owner had in the property to be sold and applied to the discharge of his debt, according to the provisions of this chapter.

HISTORY: 1962 Code Section 45‑253; 1952 Code Section 45‑253; 1942 Code Section 8762; 1932 Code Section 8762; Civ. C. ‘22 Section 5674; Civ. C. ‘12 Section 4144; Civ. C. ‘02 Section 3039; G. S. 2381; R. S. 2496; 1869 (14) 223.

Library References

Mechanics’ Liens 187.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 5, Private Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

LAW REVIEW AND JOURNAL COMMENTARIES

Mechanics’ Liens in South Carolina. 25 S.C. L. Rev. 817.

**SECTION 29‑5‑40.** Notice to owner before lien attaches when laborer was employed by someone other than owner.

Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer, mechanic, contractor or materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, the lien given by Section 29‑5‑20 shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished. But in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvement made.

HISTORY: 1962 Code Section 45‑254; 1952 Code Section 45‑254; 1942 Code Section 8729; 1932 Code Section 8729; Civ. C. ‘22 Section 5641; Civ. C. ‘12 Section 4114; Civ. C. ‘02 Section 3009; R. S. 2466; 1896 (22) 197; 1916 (29) 686.

CROSS REFERENCES

Lien coverage as including reasonable rental value of tools, appliances, machinery, and equipment supplied for improvement of real estate, see Section 29‑5‑22.

Person providing private security guard services at site of real estate site improvement being a laborer within the meaning of this section, see Section 29‑5‑25.

Library References

Mechanics’ Liens 99.

Westlaw Topic No. 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 3, Purpose and Theory.

S.C. Jur. Mechanics’ Liens Section 11, General Requirements.

S.C. Jur. Mechanics’ Liens Section 12, Limitation and Exception Applicable to Subcontractor.

S.C. Jur. Mechanics’ Liens Section 15, Persons Served.

S.C. Jur. Mechanics’ Liens Section 23, Waiver.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Commercial Law. 43 S.C. L. Rev. 24 (Autumn 1991).

NOTES OF DECISIONS

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1. In general

The manifest twofold purpose of this section and what is now Section 29‑5‑20 is (1) the protection of one not a party to a contract with the owner, who furnishes labor or material in the improvement of the owner’s property, by giving him a lien for such labor or material; and (2) the protection of the property owner by limiting his liability and that of his property in respect to all such liens to the amount due by the owner on the contract price of the improvement made. Lowndes Hill Realty Co. v Greenville Concrete Co. (1956) 229 SC 619, 93 SE2d 855. Wood v Hardy (1959) 235 SC 131, 110 SE2d 157.

Applied in Greene v Brown (1942) 199 SC 218, 19 SE2d 114. Andrews v Home Reform Soc. (1951) 219 SC 62, 64 SE2d 17. Hughes v Peel (1952) 221 SC 307, 70 SE2d 353.

Under the mechanic’s lien statutes, once the owner of a building or structure receives notice that a supplier is furnishing labor or materials for improvements to the building or structure, the owner makes any subsequent payments to the contractor at its own peril. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 115(4)

A supplier’s mechanic’s lien is limited to the amount of the unpaid balance owed to the contractor by the owner of the building or structure at the time at which the owner receives notice that the supplier is furnishing labor or materials for improvements to the building or structure. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 164(1)

Materials supplier followed statutory procedures to establish mechanic’s lien on improvements in data center, in the amount of unpaid balance of contract between data center owner and its contractor as of the date on which owner received notice that supplier was furnishing materials for improvements to data center, upon which lien supplier could maintain foreclosure action against owner; although notice of furnishing was given by supplier prior to furnishing all of the materials and did not make demand for payment of a specific amount, supplier provided separate lien notice that did include demand for payment of a specific amount after it actually furnished all of the materials and its invoices became delinquent, and supplier provided both notices prior to serving and filing its complaint for foreclosure of lien and lis pendens. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99; Mechanics’ Liens 118; Mechanics’ Liens 249

If a supplier furnishing labor or materials for improvements to a building or structure was employed by someone other than the owner of the building or structure, for a mechanic’s lien to attach to the improvements, the supplier must give written notice to the owner of the furnishing of the labor or materials. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99

Where the general contractor leaves before the job is finished, the amount due under statute prohibiting aggregate amount of subcontractor mechanics’ liens from exceeding amount due by property owner on the contract price of the improvement made is determined by the percentage of the contracted‑for work completed, and that percentage is determined as of the last day the general contractor worked on the job. Action Concrete Contractors, Inc. v. Chappelear (S.C. 2013) 404 S.C. 312, 745 S.E.2d 77. Mechanics’ Liens 164(1)

Statute precluding aggregate amount of subcontractors’ mechanic’s liens from exceeding amount due by property owner on contract price of improvements was not violated, where difference between contract price and amount that property owner had already paid was greater than subcontractor’s lien amount. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 164(1)

Main purposes of statutes governing mechanic’s liens of laborers and requiring notice to property owner before lien asserted by party who did not contract with owner attaches are (1) the protection through a lien of a party, who furnished labor or material but was not a party to a contract with the owner, and (2) the protection of the owner by preventing his liability on the liens from exceeding the amount owner owes on the contract price. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 3

A credit given by a project owner to its contractor in exchange for the cancellation of a pre‑existing debt constituted payment under Section 29‑5‑40, even though the credit resulted in a zero balance due from the owner to the contractor as of the date a subcontractor gave notice pursuant to Section 29‑5‑40 and prevented the subcontractor from enforcing its mechanic’s lien against the owner, where there was no evidence of either fraud or bad faith in the credit, since Section 29‑5‑40 does not prescribe a particular manner in which an owner may pay a contractor. A.V.A. Const. Corp. v. Palmetto Land Clearing, Inc. (S.C.App. 1992) 308 S.C. 377, 418 S.E.2d 317.

In an action by a subcontractor against the owner of property to recover damages for the owner’s breach of an oral contract by which the owner promised to pay the subcontractor for completing its work after the prime contractor was unable to continue on the job, the owner could not rely on Section 29‑5‑40 as the basis for its motion for judgment n.o.v., despite the fact that the owner had paid the prime contractor the full contract price. Section 29‑5‑40 pertains to mechanics’ liens and therefore does not apply to an action for breach of an oral contract to pay for services and materials. J.J. Lawter Plumbing v. Wen Chow Intern. Trade and Inv., Inc. (S.C.App. 1985) 286 S.C. 49, 331 S.E.2d 789.

Materialman can only recover to extent of any amount owing to contractor by owner at time contractor abandoned his contract, after determining amount of damages sustained by owner due to breach of contract. Wood v. Hardy (S.C. 1959) 235 S.C. 131, 110 S.E.2d 157.

To perfect a lien, lienor must notify owner as required by this section, serve and record a certificate of lien as provided by what is now Section 29‑5‑90, and bring suit to foreclose his lien within the six‑month period prescribed by what is now Section 29‑5‑120. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

Cited in Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

2. Notice

Notice need not be given where the purchaser of the material is the owner of the property. Matthews v Monts (1901) 61 SC 385, 39 SE 575. Snipes v Horton (1924) 129 SC 1, 123 SE 321.

A subcontractor was not precluded from seeking, pursuant to Section 29‑5‑20, payment from the owner of the building on which its work was being done, even though the owner had already paid more than the contract price by the time the subcontractor filed his notice of lien, where prior to the overpayment the subcontractor had sent a letter to the owner indicating the work performed and demanding payment, thus providing sufficient written notice of its claim to fulfill the requirements of Section 29‑5‑40. Stoudenmire Heating and Air Conditioning Co., Inc. v. Craig Bldg. Partnership (S.C.App. 1992) 308 S.C. 298, 417 S.E.2d 634.

The service of a “Notice and Certificate of Mechanic’s Lien” was not proper where the intended recipients owned a house in a subdivision, were living with a relative in another house in the subdivision, and the notice was delivered to a security guard at the entrance to the subdivision, since the guard was not a responsible person living in the intended recipients’ home. Stovall Bldg. Supplies, Inc. v. Mottet (S.C.App. 1990) 305 S.C. 28, 406 S.E.2d 176, certiorari denied.

A provider of building supplies was not entitled to an order foreclosing his mechanic’s lien on money paid to a contractor by homeowners where the provider last supplied materials to the homeowners’ job on December 4, 1987, the homeowners paid the contractor in full on December 31, 1987, and the provider did not notify the homeowners of its mechanic’s lien claim until early in 1988, since Section 29‑5‑40 provides that a mechanic’s lien will not attach to the owner’s property unless the owner is given notice of the claim prior to the payment in full of the amount owed the contractor. Stovall Bldg. Supplies, Inc. v. Mottet (S.C.App. 1990) 305 S.C. 28, 406 S.E.2d 176, certiorari denied.

If a person claiming a mechanic’s lien was employed by someone other than the owner of the property, he must notify the owner of the furnishing of the labor or material in order for the lien to attach. Shelley Const. Co., Inc. v. Sea Garden Homes, Inc. (S.C.App. 1985) 287 S.C. 24, 336 S.E.2d 488.

This section specifies no time at which or within which notice of the furnishing of material is to be given to the owner. Such notice may be given at any time. Wood v. Hardy (S.C. 1959) 235 S.C. 131, 110 S.E.2d 157.

Delay in giving notice cannot operate to the detriment of owner, because his liability under the lien is limited to the balance due by him to the prime contractor at the time he received the notice. Wood v. Hardy (S.C. 1959) 235 S.C. 131, 110 S.E.2d 157.

There is no requirement that the notice under this section be in any particular form, other than that it shall be in writing and shall apprise the property owner of the furnishing of labor or material and the value thereof, and if the certificate of lien required by what is now Section 29‑5‑90 contains this information, service of such certificate upon property owner is sufficient compliance with the requirements of this section with regard to notice. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

Notice under this section will be ineffectual if the other requisites to the perfection and enforcement of the lien set forth in what are now Sections 29‑5‑90 and 29‑5‑120 are not met. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

3. Lien priorities

If a subcontractor serves the notice and account as required by what are now Sections 29‑5‑40 and 29‑5‑90, his lien is given priority over the claim of the general contractor by what is now Section 29‑5‑50. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

4. Prorated payments

Subcontractor was not bound by prorated limit that property owner and other subcontractors reached regarding property owner’s liability on mechanic’s liens; Mechanic’s Lien Law did not require subcontractor to accept prorated settlement, and aggregate amount of the liens did not exceed the amount due by the property owner to the general contractor on the contract price. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 115(1)

The fact that a project owner paid the total contract price, and paid the supplier the prorated amount that the supplier would have recovered under its mechanics’ lien, tended to show that the owner was not unjustly enriched, thus precluding the supplier’s quantum meruit recovery against the owner. Columbia Wholesale Co., Inc. v. Scudder May N.V. (S.C. 1994) 312 S.C. 259, 440 S.E.2d 129, rehearing denied. Implied And Constructive Contracts 3; Implied And Constructive Contracts 30

5. Attachment of lien

No mechanic’s lien attaches to the property until notice of an actual demand for payment is made to the owner. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 118; Mechanics’ Liens 249

No mechanic’s lien attaches until the materials, which are the subject of the lien, have been delivered, and the written notice, including the value of those materials, is provided to the owner. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99; Mechanics’ Liens 170

Material supplier’s notice to data center owner was ineffective as a notice of lien, and thus, no lien attached to data center, even though notice stated that supplier would be supplying materials for a fire suppression system beginning on a specific date, where the notice never provided owner notice that the materials had been furnished, a project completion date, or contained any indication that payment was due at the time of the notice. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC (S.C.App. 2012) 397 S.C. 379, 725 S.E.2d 495, rehearing denied, certiorari granted, reversed 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99

**SECTION 29‑5‑50.** Lienor’s preference over contractor.

Any person claiming a lien under the provisions of this chapter who shall have given the notice provided for herein shall be entitled to be paid in preference to the contractor at whose instance the labor was performed or material furnished and no payment by the owner to the contractor thereafter shall operate to lessen the amount recoverable by the person so giving the notice.

HISTORY: 1962 Code Section 45‑255; 1952 Code Section 45‑255; 1942 Code Section 8730; 1932 Code Section 8730; Civ. C. ‘22 Section 5642; 1916 (19) 686.

Library References

Mechanics’ Liens 113(1), 194.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 117, 220 to 221.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 11, General Requirements.

S.C. Jur. Mechanics’ Liens Section 12, Limitation and Exception Applicable to Subcontractor.

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

LAW REVIEW AND JOURNAL COMMENTARIES

Joint check rule recognized. 39 S.C. L. Rev. 11, Autumn, 1987.

NOTES OF DECISIONS

In general 1

1. In general

If a subcontractor serves the notice and account as required by what are now Sections 29‑5‑40 and 29‑5‑90, his lien is given priority over the claim of the general contractor. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

Where the general contractor has abandoned the job before completion, the subcontractor gives notice of mechanics’ lien after the project is complete, and the original general contractor’s work was shoddily performed, the property owner may be entitled to offset moneys spent to repair that work against the lienholder’s recovery. Action Concrete Contractors, Inc. v. Chappelear (S.C. 2013) 404 S.C. 312, 745 S.E.2d 77. Mechanics’ Liens 161(2); Mechanics’ Liens 254(2)

Where a general contractor abandons the job before work is complete and the holder of a mechanics’ lien does not give the property owner notice of lien until after that juncture, the owner is entitled to credit against the lienholder’s recovery for damages, if any, incurred by the owner to finish the general contractor’s work. Action Concrete Contractors, Inc. v. Chappelear (S.C. 2013) 404 S.C. 312, 745 S.E.2d 77. Mechanics’ Liens 161(2); Mechanics’ Liens 254(2)

There was no evidence that property owners incurred expenses to repair work performed while general contractor was working on project or to finish house after property owners fired general contractor, and thus property owners were not entitled to any offset against amount owed to subcontractor under mechanics’ lien; only evidence was that property owners obtained estimate for cost of completion, but instead sold unfinished house to third parties for undisclosed sum. Action Concrete Contractors, Inc. v. Chappelear (S.C. 2013) 404 S.C. 312, 745 S.E.2d 77. Mechanics’ Liens 161(2); Mechanics’ Liens 254(2)

Payment by a property owner to the general contractor after the owner has received notice of a subcontractor’s mechanics’ lien is made at the owner’s peril, as it will not affect the amount recoverable by the party with the mechanics’ lien. Action Concrete Contractors, Inc. v. Chappelear (S.C. 2013) 404 S.C. 312, 745 S.E.2d 77. Mechanics’ Liens 115(4)

Mechanics’ lien statute governing lienor’s preference over contractor precluded property owners from reducing their obligation to subcontractor, who filed lien, by amount of owners’ post‑lien direct payments to other subcontractors; general contractor remained on job after property owners received notice of lien, general contractor continued to supervise project and subcontractors who continued to work on project, and owners chose to pay other subcontractors for general contractor while general contractor remained the general contractor. Action Concrete Contractors, Inc. v. Chappelear (S.C. 2013) 404 S.C. 312, 745 S.E.2d 77. Mechanics’ Liens 115(4)

In a mechanics’ lien action, the liability of the owner is limited to the amount the owner owes the general contractor at the time the materialman gives notice; consequently, a payment by the owner to the general contractor after the owner has received notice of the lien is made at the owner’s peril, as it will not affect the amount recoverable by the party with the mechanics’ lien. Maddux Supply Co., Inc. v. Safhi, Inc. (S.C.App. 1994) 316 S.C. 404, 450 S.E.2d 101. Mechanics’ Liens 115(4)

Cited in Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

**SECTION 29‑5‑60.** Proration of payments among lienors.

(A) In the event the amount due the contractor by the owner is insufficient to pay all the lienors acquiring liens as herein provided it is the duty of the owner to prorate among all just claims the amount due the contractor.

(B) In the event the amount due a subcontractor by the contractor is insufficient to pay all the lienors acquiring liens under Section 29‑5‑20 as a result of supplying labor, materials, or services to that subcontractor, all just liens must be prorated by the contractor among sub‑subcontractors and suppliers to that subcontractor.

HISTORY: 1962 Code Section 45‑256; 1952 Code Section 45‑256; 1942 Code Section 8731; 1932 Code Section 8731; Civ. C. ‘22 Section 5643; 1916 (29) 686; 1992 Act No. 368, Section 2.

CROSS REFERENCES

Effect of failure to file notice of project commencement, see Section 29‑5‑23.

Library References

Mechanics’ Liens 239.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 277 to 282, 288.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 9, General Requirements.

S.C. Jur. Mechanics’ Liens Section 11, General Requirements.

S.C. Jur. Mechanics’ Liens Section 12, Limitation and Exception Applicable to Subcontractor.

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

S.C. Jur. Mechanics’ Liens Section 23, Waiver.

NOTES OF DECISIONS

In general 1

Quantum meruit 3

Settlement of claims of nonperfected lienholders 2

1. In general

Evidence supported trial court’s finding that mold damage to building due to alleged improper installation of installation was inapplicable when determining adjusted contract price of construction for purposes of calculating property owner’s remaining liability to general contractor, and ultimately to subcontractor, in action to enforce mechanic’s lien of subcontractor which installed door frames and locks; evidence indicated that damage was not discovered until after owner’s pleading was submitted, general contractor may not have caused mold problem, and owner’s witness inspected insulation after installation and found no problems. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 281(1)

For purposes of statute imposing duty on property owner to prorate among all just claims the amount due the general contractor when the amount due the general contractor is insufficient to pay all parties asserting mechanic’s liens, a subcontractor has a “just claim” when a lien attaches. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 115(1)

Subcontractor was not bound by prorated limit that property owner and other subcontractors reached regarding property owner’s liability on mechanic’s liens; Mechanic’s Lien Law did not require subcontractor to accept prorated settlement, and aggregate amount of the liens did not exceed the amount due by the property owner to the general contractor on the contract price. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 115(1)

The fact that a project owner paid the total contract price, and paid the supplier the prorated amount that the supplier would have recovered under its mechanics’ lien, tended to show that the owner was not unjustly enriched, thus precluding the supplier’s quantum meruit recovery against the owner. Columbia Wholesale Co., Inc. v. Scudder May N.V. (S.C. 1994) 312 S.C. 259, 440 S.E.2d 129, rehearing denied. Implied And Constructive Contracts 3; Implied And Constructive Contracts 30

A lienor has a “just claim” under Section 29‑5‑60 once the lien attaches. Charleston Lumber Co., Inc. v. GPT, a Florida Partnership (S.C.App. 1991) 303 S.C. 350, 400 S.E.2d 508.

“Just claims” referred to in this section means the just claims of all lienors “acquiring liens as herein provided.” Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

There is no priority among lien claimants who have complied with the requirements of what are now Sections 29‑5‑40 and 29‑5‑90, and the order in which liens are perfected is of no effect. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

2. Settlement of claims of nonperfected lienholders

Statute imposing duty on property owner to prorate among all just claims the amount due the general contractor when the amount due the general contractor is insufficient to pay all parties asserting mechanic’s liens does not create a duty for the subcontractor to accept the prorated settlement. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Mechanics’ Liens 115(1)

A materialman who held the only perfected mechanic’s lien was entitled to 100 percent of its claim, and was not limited to the amount it would have received had all of the non‑filing materialmen perfected their liens, even though the owner had settled the claims of all of the non‑filing materialmen prior to the expiration of the time period for filing a notice of lien on the property; the materialman’s claim was the only “just claim” contemplated by Section 29‑5‑60, and the mechanic’s lien statute does not have a provision giving credit for owners who on their own settle claims of non‑perfected lien holders. Charleston Lumber Co., Inc. v. GPT, a Florida Partnership (S.C.App. 1991) 303 S.C. 350, 400 S.E.2d 508.

3. Quantum meruit

Subcontractor was not permitted to recover full amount it was owed from general contractor on quantum meruit claim against lessee of property, rather, its recovery from lessee was limited to prorated share of amount lessee withheld from general contractor; lessee paid general contract over 95 percent of contract price, amount allegedly owed to subcontractor by general contractor was much higher than amount retained by lessee, and, although subcontractor abandoned its mechanics’ lien claim, mechanics’ lien statutes, and their limitations, were proper measure of subcontractor’s damages against lessee. Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc. (S.C.App. 2016) 418 S.C. 424, 794 S.E.2d 382, rehearing denied. Implied and Constructive Contracts 30

**SECTION 29‑5‑70.** Force of lien against existing recorded mortgage.

Except as otherwise provided in Section 29‑3‑50, a lien claimed by any mechanic or materialman furnishing labor, services, or material is not enforceable against any mortgage recorded before the filing of the notice pursuant to Section 29‑5‑90 setting forth the statement of account upon which the lien is based.

HISTORY: 1962 Code Section 45‑257; 1952 Code Section 45‑257; 1942 Code Section 8733; 1932 Code Section 8733; Civ. C. ‘22 Section 5645; Civ. C. ‘12 Section 4515; Civ. C. ‘02 Section 3010; G. S. 2352; R. S. 2467; 1869 (14) 220; 1988 Act No. 635, Section 2.

Library References

Mechanics’ Liens 198.

Mortgages 151(3).

Westlaw Topic Nos. 257, 266.

C.J.S. Mechanics’ Liens Sections 221 to 239, 241, 243 to 244.

C.J.S. Mortgages Sections 210, 226.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Williamson v Hotel Melrose (1918) 110 SC 1, 96 SE 407. Metz v Critcher (1909) 83 SC 396, 65 SE 396.

A subcontractors’ mechanics’ lien is subject to existing liens of which the subcontractor has actual or constructive notice. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

A subcontractors’ lien is subject to the lien of a construction loan secured by a recorded mortgage. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

Advances made by a mortgagee subsequent to the execution of its mortgage are generally afforded the same priority against subsequent creditors as advances made contemporaneous with the execution of the mortgage; this priority is generally afforded by virtue of Sections 29‑3‑50 and 29‑5‑70. Thus, even if a mortgagee had notice of a remodeling contractor’s mechanic’s lien before it disbursed funds under the terms of its mortgage, such notice would not afford the mechanic’s lien priority over the disbursements. Glover v. Lewis (S.C.App. 1989) 299 S.C. 44, 382 S.E.2d 242.

Priority between a mechanic’s lien and an advance made under a previously recorded mortgage, Fulmer Bldg. Supplies, Inc. v. Martin (S.C. 1968) 251 S.C. 353, 162 S.E.2d 541.

**SECTION 29‑5‑80.** Notice of nonresponsibility by owner of building or structure.

The owner of any such building or structure in process of erection or being altered or repaired, other than the person by whom or in whose behalf a contract for labor or materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed or materials not then furnished by giving notice, in writing, to the person performing or furnishing such labor or furnishing such materials that he will not be responsible therefor.

HISTORY: 1962 Code Section 45‑258; 1952 Code Section 45‑258; 1942 Code Section 8734; 1932 Code Section 8734; Civ. C. ‘22 Section 5646; Civ. C. ‘12 Section 4116; Civ. C. ‘02 Section 3011; G. S. 2356; R. S. 2468; 1869 (14) 220.

Library References

Mechanics’ Liens 78.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 90 to 91.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 12, Limitation and Exception Applicable to Subcontractor.

NOTES OF DECISIONS

In general 1

1. In general

It is not necessary for owner to give notice that he will not be responsible for material furnished and used in order to prevent lien’s attaching, unless he has agreed or consented thereto as provided in what is now Section 29‑5‑10. Metz v. Critcher (S.C. 1910) 86 S.C. 348, 68 S.E. 627.

**SECTION 29‑5‑90.** Dissolution of lien for failure to serve and file statement; contents of statement.

Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefor as for recording mortgages of equal length. Provided, that in the event neither the owner nor the person in possession can be located after diligent search, and this fact is verified by affidavit of the sheriff or his deputy, the lien may be preserved by filing the statement together with the affidavit. The delivery on the register or clerk for filing, as provided in this section, shall be and constitute the delivery contemplated with regard to such liens in Title 30 of this Code.

HISTORY: 1962 Code Section 45‑259; 1952 Code Section 45‑259; 1942 Code Section 8735; 1932 Code Section 8735; Civ. C. ‘22 Section 5647; Civ. C. ‘12 Section 4117; Civ. C. ‘02 Section 3012; G. S. 2354; R. S. 2469; 1869 (14) 220; 1873 (15) 350; 1884 (18) 822; 1950 (46) 2294; 1957 (50) 180.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

CROSS REFERENCES

Certain liens superior to lien of recorded mortgage as to disbursements made after filing of notice of lien required by this section, see Section 29‑3‑50.

Liens not being enforceable against existing recorded mortgages, see Section 29‑5‑70.

Mortgages for future advances, see Section 29‑3‑50.

Library References

Mechanics’ Liens 117, 123, 136.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 122 to 132, 154, 158, 168.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

S.C. Jur. Mechanics’ Liens Section 4, General Rules of Interpretation.

S.C. Jur. Mechanics’ Liens Section 11, General Requirements.

S.C. Jur. Mechanics’ Liens Section 15, Persons Served.

S.C. Jur. Mechanics’ Liens Section 16, Contents of Statement of Account Served on Owner.

S.C. Jur. Mechanics’ Liens Section 17, Time Limitations.

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

S.C. Jur. Mechanics’ Liens Section 24, Discharge and Bonding Off.

Forms

Am. Jur. Pl. & Pr. Forms Mechanics’ Liens Section 31 , Introductory Comments.

Treatises and Practice Aids

8 Causes of Action 2d 749, Cause of Action Against Lessor of Realty to Enforce Construction Lien Based on Work Done Under Contract With Lessee.

45 Causes of Action 2d 97, Cause of Action to Enforce Mechanic’s Lien.

NOTES OF DECISIONS

In general 1

Extension of filing period 5

Priorities 4

Statement of account; contents 2

Statement of account; time for filing 3

1. In general

Applied in Williamson v Hotel Melrose (1918) 110 SC 1, 96 SE 407. Drewery v Columbia Amusement Co. (1911) 87 SC 445, 69 SE 879, reh dismd 87 SC 449, 69 SE 1094. Murphy v Valk (1889) 30 SC 262, 9 SE 101. General Constr. Co. v Hering Realty Co. (1962, DC SC) 201 F Supp 487, app dismd (CA4 SC) 312 F2d 538, 6 FR Serv 2d 974.

Additional related cases, see Oliver v Fowler (1885) 22 SC 534. Kelly v Bank of State (1841) 16 SC Eq 431.

Materials supplier followed statutory procedures to establish mechanic’s lien on improvements in data center, in the amount of unpaid balance of contract between data center owner and its contractor as of the date on which owner received notice that supplier was furnishing materials for improvements to data center, upon which lien supplier could maintain foreclosure action against owner; although notice of furnishing was given by supplier prior to furnishing all of the materials and did not make demand for payment of a specific amount, supplier provided separate lien notice that did include demand for payment of a specific amount after it actually furnished all of the materials and its invoices became delinquent, and supplier provided both notices prior to serving and filing its complaint for foreclosure of lien and lis pendens. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 99; Mechanics’ Liens 118; Mechanics’ Liens 249

If a supplier fails to timely complete any of the steps to perfect and enforce a mechanics’ lien, the lien is dissolved. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 160; Mechanics’ Liens 260(6)

If a supplier timely completes all of the steps to perfect and enforce a mechanic’s lien on improvements to a building or structure, the supplier may maintain a foreclosure action upon the lien. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 249

The date on which a supplier ceases furnishing labor or materials for improvements to a building or structure is the trigger for determining when the supplier must serve and file a notice or certificate of a mechanic’s lien, commence a lawsuit to enforce the lien, and file a lis pendens. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 132(1); Mechanics’ Liens 260(1); Mechanics’ Liens 268

In a mechanics’ lien case, evidence supported the refusal to set aside entry of default for failure to answer the complaint, pursuant to Rule 55(c), SCRCP, since the owners were chargeable with their attorney’s failure to answer the complaint; even if the attorney were negligent in failing to answer the complaint, his negligence was to be imputed to the owners. Williams v. Vanvolkenburg (S.C.App. 1994) 312 S.C. 373, 440 S.E.2d 408, rehearing denied, certiorari denied.

When a party files a notice of lien under Section 29‑5‑90, the party is asserting that at a time within 90 days before the notice, he or she has performed work for which he or she is entitled to assert a lien. The clear meaning of the language of the statute is that the labor contemplated in the filed statement has already been performed within 90 days prior to the filing. Preferred Sav. and Loan Ass’n, Inc. v. Royal Garden Resort, Inc. (S.C. 1990) 301 S.C. 1, 389 S.E.2d 853. Mechanics’ Liens 117.1

This section does not require that it be shown that the labor and materials were furnished under one contract, or under contract with the same person. Hughes v. Peel (S.C. 1952) 221 S.C. 307, 70 S.E.2d 353.

Cited in Waring v. Miller Batting & Mfg. Co. (S.C. 1892) 36 S.C. 310, 15 S.E. 132.

2. Statement of account; contents

A trial judge erred in holding that a statement account was inadequate because the contractor had failed to include “a statement of a just and true account of the amount owed to him, with all just credits given,” where the record before the court was meager, since a dismissal on this ground is allowed only where there appears to be no genuine issue of fact. A.V.A. Const. Corp. v. Santee Wando Const. (S.C.App. 1990) 303 S.C. 333, 400 S.E.2d 498.

Language of mechanic’s lien statute does not require itemized statement of account. Black v. Haile (S.C. 1978) 270 S.C. 93, 240 S.E.2d 646.

Trial judge erred in dissolving mechanic’s lien for failure to file just and true account of amount due and for claiming more than was due, where there was genuine issue as to amount due. Black v. Haile (S.C. 1978) 270 S.C. 93, 240 S.E.2d 646.

Statement of claim of lien need contain no allegation as to contract. National Loan & Exchange Bank of Columbia v. Argo Development Co. (S.C. 1927) 141 S.C. 72, 139 S.E. 183. Mechanics’ Liens 271(8)

Sufficiency of description of property, see Matthews v. Monts (S.C. 1901) 61 S.C. 385, 39 S.E. 575.

3. Statement of account; time for filing

Warranty work performed by a carpet contractor 5 months after the installation of the carpeting, which was necessary to complete performance under the contract, constituted the furnishing of the “labor or materials” under Sections 29‑5‑90 and 29‑5‑120, and therefore extended the time for perfecting a mechanic’s lien. Thus, the carpeting contractor timely perfected its mechanic’s lien where it filed its notice and affidavit of mechanic’s lien within 90 days of the date the warranty work was performed and commenced suit to enforce its lien within 6 months. Crystal Pools, Inc. v. Old Claussen’s Bakery Partners (S.C.App. 1990) 303 S.C. 68, 399 S.E.2d 5, certiorari denied.

Under the procedure set forth in Sections 29‑5‑90 and 29‑5‑120, a mechanic’s lien arises, inchoate, when the labor is performed or the materials are furnished. When a party files a notice of lien under Section 29‑5‑90, he or she is asserting that at a time within 90 days before the notice he or she has performed work for which he or she is entitled to assert a lien. As a further step in perfecting this lien, the party must also file suit to foreclose the lien within 6 months from the time the party ceased to perform the work. Logically, the 2 statutes look to the same point in time. Because the party asserts in the notice that the work has already been performed, the date of cessation of the labor for which the lienor seeks payment must be a date before the notice of lien is filed and not after. Preferred Sav. and Loan Ass’n, Inc. v. Royal Garden Resort, Inc. (S.C.App. 1988) 295 S.C. 268, 368 S.E.2d 78, affirmed 301 S.C. 1, 389 S.E.2d 853.

Even though goods were initially delivered to wrong job, lien for materials furnished in construction of private residence was timely filed where goods were ordered by contractor within 90 days of filing, and where homeowner had consented to be responsible for any purchases made by contractor. Hodge v. First Federal Sav. and Loan Ass’n of Spartanburg (S.C. 1976) 267 S.C. 270, 227 S.E.2d 310.

This section runs from date of last material furnished or last item of work done, even if such material or work be insignificant and even though the doing of the last item of work be delayed, provided the delay is not for the purpose of extending the period for giving notice. Wood v. Hardy (S.C. 1959) 235 S.C. 131, 110 S.E.2d 157.

To perfect a lien, lienor must notify owner as required by what is now Section 29‑5‑40, record and serve a certificate of lien as provided by this section, and bring suit to foreclose his lien within the six‑month period prescribed by what is now Section 29‑5‑120. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

The only requirement of the law is that the account be filed within ninety days after the lienor ceases to labor on or furnish labor or materials for such building or structure. Hughes v. Peel (S.C. 1952) 221 S.C. 307, 70 S.E.2d 353.

4. Priorities

If a subcontractor serves the notice and account as required by what are now Sections 29‑5‑40 and 29‑5‑90, his lien is given priority over the claim of the general contractor. U. S. v. Chester Heights Associates (D.C.S.C. 1975) 406 F.Supp. 600.

5. Extension of filing period

When an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the 90‑day period for filing the certificate of mechanics’ lien past the date of substantial completion; if, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate. Butler Contracting, Inc. v. Court Street, LLC (S.C. 2006) 369 S.C. 121, 631 S.E.2d 252. Mechanics’ Liens 132(8)

**SECTION 29‑5‑100.** Proceedings not invalidated by inaccuracy of statement of account.

No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials shall invalidate the proceedings, unless it appear that the person filing the certificate has wilfully and knowingly claimed more than is his due.

HISTORY: 1962 Code Section 45‑260; 1952 Code Section 45‑260; 1942 Code Section 8736; 1932 Code Section 8736; Civ. C. ‘22 Section 5648; Civ. C. ‘12 Section 4118; Civ. C. ‘02 Section 3013; G. S. 2355; R. S. 2470; 1869 (14) 220.

Library References

Mechanics’ Liens 157.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 161, 178, 184, 192.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 16, Contents of Statement of Account Served on Owner.

NOTES OF DECISIONS

In general 1

1. In general

Trial judge erred in dissolving mechanic’s lien for failure to file just and true account of amount due and for claiming more than was due, where there was genuine issue as to amount due. Black v. Haile (S.C. 1978) 270 S.C. 93, 240 S.E.2d 646.

The methods of discharging a mechanics’ lien under what are now Sections 29‑5‑100, 29‑5‑110, and 29‑5‑120 are not exclusive, and the court has inherent power to vacate a mechanics’ lien when the harm caused by it cannot be corrected by the statutory methods. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

The true date of the completion of labor may be shown as different from that stated in the notice of lien filed. Willard v. Finch (S.C. 1922) 121 S.C. 1, 113 S.E. 302.

**SECTION 29‑5‑110.** Release of lien upon filing written undertaking and security.

At any time after service and filing of the statement required under Section 29‑5‑90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one‑third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, such judgment shall be paid out of the cash deposited or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by Section 29‑5‑120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided.

HISTORY: 1962 Code Section 45‑261; 1952 Code Section 45‑261; 1950 (46) 2294; 1976 Act No. 635, Section 1.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

Library References

Mechanics’ Liens 218.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 263.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 22, Mechanic’s Liens.

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

S.C. Jur. Mechanics’ Liens Section 24, Discharge and Bonding Off.

Attorney General’s Opinions

A court most likely would find that Section 29‑5‑110 does not permit the release of a mechanic’s lien by filing an undertaking secured by an irrevocable line of credit dedicated to the contractor; an irrevocable line of credit is not one of the options listed in the statute. S.C. Op.Atty.Gen. (July 10, 2017) 2017 WL 3105902.

NOTES OF DECISIONS

In general 1

1. In general

On remand in contractors’ action against construction lender to foreclose mechanics’ lien, whether the contractors could demonstrate that they were entitled to foreclosure remained an issue to be decided, even if bond issued by lender effectively substituted for the real property pursuant to statute allowing release of lien upon filing written undertaking and security; contractors’ right to receive payment under the bond, as opposed to receiving the property itself in foreclosure, was still dependent upon merits of issues related to foreclosure of the mechanics’ liens. Moorhead Const., Inc. v. Enterprise Bank of South Carolina (S.C.App. 2014) 410 S.C. 386, 765 S.E.2d 1. Mechanics’ Liens 309

Property owner’s compliance with bond procedures regarding a mechanics’ lien allows the property owner to convey or encumber the property free and clear of the mechanics’ lien. Cohen’s Drywall Co. Inc. v. Sea Spray Homes, LLC (S.C. 2007) 374 S.C. 195, 648 S.E.2d 598. Mechanics’ Liens 219

Mechanics’ lien generally is enforced against the real property upon which the services were performed or materials provided; however, the Code provides that the property may be released from a mechanics’ lien under certain circumstances. Cohen’s Drywall Co. Inc. v. Sea Spray Homes, LLC (S.C. 2007) 374 S.C. 195, 648 S.E.2d 598. Mechanics’ Liens 219; Mechanics’ Liens 245(1)

Under statutes governing enforcement of mechanics’ liens, naming property owners’ real property as subject of the action was sufficient to secure foreclosure of cash bond that property owners posted after lien was filed but before enforcement action was commenced, and thus contractor was not required to bring action against cash bond. Cohen’s Drywall Co. Inc. v. Sea Spray Homes, LLC (S.C. 2007) 374 S.C. 195, 648 S.E.2d 598. Mechanics’ Liens 227

Owner was the “prevailing party” within the meaning of mechanic’s lien statute’s attorney fees provision, although subcontractor’s claim was dismissed pursuant to procedural rule; owners could not have been held liable for damages sought under any circumstances and dismissal was not due to mere technicality, since they had posted surety bond to secure the lien, pursuant to statute. Keeney’s Metal Roofing, Inc. v. Palmieri (S.C.App. 2001) 345 S.C. 550, 548 S.E.2d 900, rehearing denied, certiorari denied. Mechanics’ Liens 310(1)

In an action to foreclose a mechanics’ lien by a materialman against a subcontractor and the general contractor, any judgment awarded to the materialman would be paid by bond where the general contractor filed a bond discharging that property from the lien and transferring the lien to the bond. Maddux Supply Co., Inc. v. Safhi, Inc. (S.C.App. 1994) 316 S.C. 404, 450 S.E.2d 101.

In a mechanics’ lien case, the court erred in ordering payment to a subcontractor out of money deposited with the court clerk in an attempt to bond off the mechanics’ lien instead of ordering a foreclosure sale of the house, since an incorrect amount had been deposited with the clerk, and thus the house was not released as security for the mechanics’ lien. Williams v. Vanvolkenburg (S.C.App. 1994) 312 S.C. 373, 440 S.E.2d 408, rehearing denied, certiorari denied. Mechanics’ Liens 224; Mechanics’ Liens 291(6)

It is not necessary for a notice of pendency of the action to be filed in order to preserve a mechanic’s lien if, prior to the commencement of the action to enforce the lien, the property has been discharged from the lien by the filing of an undertaking pursuant to Section 29‑5‑110. Shelley Const. Co., Inc. v. Sea Garden Homes, Inc. (S.C.App. 1985) 287 S.C. 24, 336 S.E.2d 488.

The methods of discharging a mechanics’ lien under what are now Sections 29‑5‑100, 29‑5‑110, and 29‑5‑120 are not exclusive, and the court has inherent power to vacate a mechanics’ lien when the harm caused by it cannot be corrected by the statutory methods. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

Stated in Stephenson Finance Co. v. Burgess (S.C. 1954) 225 S.C. 347, 82 S.E.2d 512.

**SECTION 29‑5‑120.** Time for bringing suit to enforce lien; dissolution and release of lien.

(A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics’ lien and associated bonds may be released by a court order, a written affidavit of the bond holder’s attorney, or by a written affidavit from the defendant’s attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics’ lien was filed and must reference the lien’s recording information.

HISTORY: 1962 Code Section 45‑262; 1952 Code Section 45‑262; 1942 Code Section 8737; 1932 Code Section 8737; Civ. C. ‘22 Section 5649; Civ. C. ‘12 Section 4119; Civ. C. ‘02 Section 3014; G. S. 2356; R. S. 2471; 1869 (14) 220; 1873 (15) 350; 1957 (50) 181; 2009 Act No. 40, Section 3, eff June 2, 2009.

Effect of Amendment

The 2009 amendment designated subsection (A) and added subsection (B) relating to conditions under which lien may be released.

Library References

Mechanics’ Liens 260.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 323 to 330.

RESEARCH REFERENCES

ALR Library

59 ALR 6th 1 , Admissibility and Necessity of Expert Evidence as to Standards of Practice and Negligence in Malpractice Action Against Attorney‑Conduct Related to Procedural Issues.

Encyclopedias

S.C. Jur. Attorney Fees Section 63, Mechanics’ Liens.

S.C. Jur. Lis Pendens Section 22, Mechanic’s Liens.

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

S.C. Jur. Mechanics’ Liens Section 24, Discharge and Bonding Off.

Treatises and Practice Aids

45 Causes of Action 2d 97, Cause of Action to Enforce Mechanic’s Lien.

NOTES OF DECISIONS

In general 1

Construction with Section 29‑5‑90 2

1. In general

Quoted in Tenney v Anderson Water, Light & P. Co. (1903) 67 SC 11, 45 SE 111. Wood v Hardy (1959) 235 SC 131, 110 SE2d 157.

Applied in General Const. Co. v. Hering Realty Co., 1962, 201 F.Supp. 487, appeal dismissed 312 F.2d 538.

If a supplier fails to timely complete any of the steps to perfect and enforce a mechanics’ lien, the lien is dissolved. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 160; Mechanics’ Liens 260(6)

If a supplier timely completes all of the steps to perfect and enforce a mechanic’s lien on improvements to a building or structure, the supplier may maintain a foreclosure action upon the lien. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 249

The date on which a supplier ceases furnishing labor or materials for improvements to a building or structure is the trigger for determining when the supplier must serve and file a notice or certificate of a mechanic’s lien, commence a lawsuit to enforce the lien, and file a lis pendens. Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, L.L.C. (S.C. 2014) 409 S.C. 331, 762 S.E.2d 561. Mechanics’ Liens 132(1); Mechanics’ Liens 260(1); Mechanics’ Liens 268

A trial judge erred in enforcing a mechanic’s lien where the contractor failed to file a lis pendens, and thus failed to follow the requirements of Section 29‑5‑120. Muller v. Myrtle Beach Golf & Yacht Club (S.C.App. 1990) 303 S.C. 137, 399 S.E.2d 430, certiorari dismissed 305 S.C. 330, 408 S.E.2d 242.

Statutory procedure that both suit be commenced and notice of pendency be filed within 6 months is mandatory, and failure to do either results in dissolving of lien. Multiplex Bldg. Corp., Inc. v. Lyles (S.C. 1977) 268 S.C. 577, 235 S.E.2d 133.

Mechanics’ lien claimant must file notice of pendency within 6 months, even though suit to foreclose lien, filed within 6 month limitation, does not affect rights of third persons. Multiplex Bldg. Corp., Inc. v. Lyles (S.C. 1977) 268 S.C. 577, 235 S.E.2d 133.

Consequences of failure to file notice of pendency of mechanics’ lien action are prescribed by this section and not by cases under the lis pendens statute, Section 15‑11‑10. Multiplex Bldg. Corp., Inc. v. Lyles (S.C. 1977) 268 S.C. 577, 235 S.E.2d 133.

The methods of discharging a mechanics’ lien under what are now Sections 29‑5‑100, 29‑5‑110, and 29‑5‑120 are not exclusive, and the court has inherent power to vacate a mechanics’ lien when the harm caused by it cannot be corrected by the statutory methods. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

To perfect a lien, lienor must notify owner as required by what is now Section 29‑5‑40, record and serve a certificate of lien as provided by what is now Section 29‑5‑90, and bring suit to foreclose his lien within the time period prescribed by this section. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

The institution of an action by the owner relieves all of the lien claimants who are made parties defendant therein from the necessity of thereafter bringing suit to foreclose their liens. But if the six‑month period in which such foreclosure suits are required under this section to be brought has expired when the action is commenced, the liens of such claimants are lost. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

When action commences, see Oliver v. Fowler (S.C. 1885) 22 S.C. 534.

2. Construction with Section 29‑5‑90

Interpreting Sections 29‑5‑90 and 29‑5‑120 requires the party asserting the lien to commence the foreclosure action within six months after the lien is filed notwithstanding the fact that Section 29‑5‑120 specifically states that the action must be filed within six months after the person desiring to avail himself of the lien ceases to labor on the particular construction project. Cianbro Corp. v. Jeffcoat and Martin, 1992, 804 F.Supp. 784, affirmed 10 F.3d 806.

The effect of construing Sections 29‑5‑90 and 29‑5‑120 together is that the six month limitations period for enforcing the lien necessarily commences no later than the date the certificate of lien is filed. If suit is not commenced within six months after the date of filing, title examiners may assume that the mechanic’s lien is dissolved. Cianbro Corp. v. Jeffcoat and Martin, 1992, 804 F.Supp. 784, affirmed 10 F.3d 806.

Warranty work performed by a carpet contractor 5 months after the installation of the carpeting, which was necessary to complete performance under the contract, constituted the furnishing of the “labor or materials” under Sections 29‑5‑90 and 29‑5‑120, and therefore extended the time for perfecting a mechanic’s lien. Thus, the carpeting contractor timely perfected its mechanic’s lien where it filed its notice and affidavit of mechanic’s lien within 90 days of the date the warranty work was performed and commenced suit to enforce its lien within 6 months. Crystal Pools, Inc. v. Old Claussen’s Bakery Partners (S.C.App. 1990) 303 S.C. 68, 399 S.E.2d 5, certiorari denied.

Sections 29‑5‑120 and 29‑5‑90 look to the same point in time. Both time limits run from the same event ‑ the certificate of lien must be filed within 90 days, and the foreclosure suit must be commenced within 6 months, after the contractor “ceases to furnish labor or materials.” The effect of these provisions is that the 6‑month limitations period for enforcing the lien necessarily commences no later than the date the certificate of lien is filed. If suit is not commenced within 6 months after the date of filing, title examiners may assume that the mechanic’s lien is dissolved. Preferred Sav. and Loan Ass’n, Inc. v. Royal Garden Resort, Inc. (S.C. 1990) 301 S.C. 1, 389 S.E.2d 853.

Under the procedure set forth in Sections 29‑5‑90 and 29‑5‑120, a mechanic’s lien arises, inchoate, when the labor is performed or the materials are furnished. When a party files a notice of lien under Section 29‑5‑90, he or she is asserting that at a time within 90 days before the notice he or she has performed work for which he or she is entitled to assert a lien. As a further step in perfecting this lien, the party must also file suit to foreclose the lien within 6 months from the time the party ceased to perform the work. Logically, the 2 statutes look to the same point in time. Because the party asserts in the notice that the work has already been performed, the date of cessation of the labor for which the lienor seeks payment must be a date before the notice of lien is filed and not after. Preferred Sav. and Loan Ass’n, Inc. v. Royal Garden Resort, Inc. (S.C.App. 1988) 295 S.C. 268, 368 S.E.2d 78, affirmed 301 S.C. 1, 389 S.E.2d 853.

**SECTION 29‑5‑130.** Enforcement of certain liens before magistrate’s court.

When the amount of the claim does not exceed one hundred dollars the lien may be enforced by a petition to a magistrate. And such magistrate shall have like power and authority within his jurisdiction as herein conferred upon the court of common pleas, with like rights of appeal to the parties as exist in other civil cases.

HISTORY: 1962 Code Section 45‑263; 1952 Code Section 45‑263; 1942 Code Section 8739; 1932 Code Section 8739; Civ. C. ‘22 Section 5651; Civ. C. ‘12 Section 4121; Civ. C. ‘02 Section 3016; G. S. 2358; R. S. 2473; 1869 (14) 221.

CROSS REFERENCES

Magistrates generally, see Sections 22‑1‑10 et seq.

Library References

Mechanics’ Liens 258.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 308.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

**SECTION 29‑5‑140.** Enforcement of lien by petition to court of common pleas.

The lien may be enforced by petition to the court of common pleas for the county in which the building or structure is situated. The petition may be filed in term or in the clerk’s office in vacation and the date of the filing shall be deemed the commencement of the suit.

HISTORY: 1962 Code Section 45‑264; 1952 Code Section 45‑264; 1942 Code Section 8738; 1932 Code Section 8738; Civ. C. ‘22 Section 5650; Civ. C. ‘12 Section 4120; Civ. C. ‘02 Section 3015; G. S. 2357; R. S. 2472; 1869 (14) 220.

Library References

Mechanics’ Liens 258.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 308.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

Additional related cases, see Metz v Critcher (1909) 83 SC 396, 65 SE 394. Tenney v Anderson Water, Light & P. Co. (1903) 67 SC 11, 45 SE 111.

Nature of suit to foreclose mechanic’s lien, see Hering Realty Co. v. General Const. Co. (C.A.4 (S.C.) 1959) 272 F.2d 371.

Stated in Burris Chemical, Inc. v. Daniel Const. Co. (S.C. 1968) 251 S.C. 483, 163 S.E.2d 618.

This chapter affords the only remedy for the enforcement of a mechanic’s lien. Turbeville v. Gordon (S.C. 1960) 236 S.C. 57, 113 S.E.2d 68.

A builder may maintain action under the Code upon his contract to construct a house, as if he had no mechanics’ lien for the security of his debt. Turbeville v. Gordon (S.C. 1960) 236 S.C. 57, 113 S.E.2d 68.

Where such rights as a builder may have had on the theory of a mechanic’s lien had been adjudged adversely, there was no merit in his contention that in addition to recovering the balance due on the contract to construct a house, it was entitled to recover the reasonable value of the owner’s use of the property. Turbeville v. Gordon (S.C. 1960) 236 S.C. 57, 113 S.E.2d 68.

Assignee of lien may enforce it. Oliver v. Fowler (S.C. 1885) 22 S.C. 534.

This section [Code 1962 Section 45‑264] creates no right, but simply relates to enforcement of such right. Geddes v. Bowden (S.C. 1883) 19 S.C. 1.

**SECTION 29‑5‑150.** Service of petition.

The petition may be served with the summons or filed with the clerk and shall be returned and entered as other civil cases.

HISTORY: 1962 Code Section 45‑265; 1952 Code Section 45‑265; 1942 Code Section 8740; 1932 Code Section 8740; Civ. C. ‘22 Section 5652; Civ. C. ‘12 Section 4122; Civ. C. ‘02 Section 3017; G. S. 2359; R. S. 2474; 1869 (14) 221.

Library References

Mechanics’ Liens 265.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 344.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 22, Mechanic’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

Additional related case, see Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

Summons may be used. Oliver v. Fowler (S.C. 1885) 22 S.C. 534.

Summons is not necessary. Johnson v. Frazee (S.C. 1884) 20 S.C. 500.

**SECTION 29‑5‑160.** Contents of petition.

The petition shall contain a brief statement of the contract on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand.

HISTORY: 1962 Code Section 45‑266; 1952 Code Section 45‑266; 1942 Code Section 8741; 1932 Code Section 8741; Civ. C. ‘22 Section 5653; Civ. C. ‘12 Section 4123; Civ. C. ‘02 Section 3018; G. S. 2360; R. S. 2475; 1869 (14) 220.

Library References

Mechanics’ Liens 271.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 347 to 361.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

NOTES OF DECISIONS

In general 1

1. In general

The statute providing for liberal construction of allegations of pleading, for purpose of determining its effect, applies in determining whether petition for foreclosure of mechanic’s lien conforms to requirements of this section. National Loan & Exchange Bank of Columbia v. Argo Development Co. (S.C. 1927) 141 S.C. 72, 139 S.E. 183.

Use of material in structure on property against which lien is claimed must appear in foreclosure petition. National Loan & Exchange Bank of Columbia v. Argo Development Co. (S.C. 1927) 141 S.C. 72, 139 S.E. 183. Mechanics’ Liens 271(1)

Additional related case, see Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

**SECTION 29‑5‑170.** Petition filed by multiple lienors.

Any number of persons who have actually performed labor or furnished labor or materials on one or more buildings or structures upon different lots of land, when the labor was performed for the same owner, contractor or other person, may join in the same petition for their respective liens and the same proceedings shall be had in regard to the rights of each petitioner and the respondent may defend as to each petitioner in the same manner as if he had severally petitioned for his individual lien.

HISTORY: 1962 Code Section 45‑267; 1952 Code Section 45‑267; 1942 Code Section 8743; 1932 Code Section 8743; Civ. C. ‘22 Section 5655; Civ. C. ‘12 Section 4125; Civ. C. ‘02 Section 3020; G. S. 2362; R. S. 2477; 1869 (14) 220.

Library References

Mechanics’ Liens 262(1).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 333.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

**SECTION 29‑5‑180.** Amendments of pleadings.

The court may at any time allow either party to amend his pleadings as in other civil actions.

HISTORY: 1962 Code Section 45‑268; 1952 Code Section 45‑268; 1942 Code Section 8742; 1932 Code Section 8742; Civ. C. ‘22 Section 5654; Civ. C. ‘12 Section 4124; Civ. C. ‘02 Section 3019; G. S. 2361; R. S. 2476; 1869 (14) 220.

Library References

Mechanics’ Liens 276.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 347, 367.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

NOTES OF DECISIONS

In general 1

1. In general

Related cases, see Tenney v Anderson Water, Light & P. Co. (1903) 67 SC 11, 45 SE 111. McGee v Piedmont Mfg. Co. (1876) 7 SC 263. Geddes v Bowden (1883) 19 SC 1. Waring v Miller Batting & Manuf’g Co. (1892) 36 SC 310, 15 SE 132.

**SECTION 29‑5‑190.** Notice to owner and other creditors.

The court in which the petition is entered shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day in the same term or at the next term, by serving him with an attested copy of the petition, with the order of the court thereon, fourteen days at least before the time assigned for the hearing. And the court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate by serving them with a copy of the last‑mentioned order in like manner.

HISTORY: 1962 Code Section 45‑269; 1952 Code Section 45‑269; 1942 Code Section 8744; 1932 Code Section 8744; Civ. C. ‘22 Section 5656; Civ. C. ‘12 Section 4126; Civ. C. ‘02 Section 3021; G. S. 2363; R. S. 2478; 1869 (14) 220.

Library References

Mechanics’ Liens 268.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 346.

NOTES OF DECISIONS

In general 1

1. In general

Additional related case, see Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

Either the proceeding here or that in Code 1962 Section 45‑265 may be properly used. Oliver v. Fowler (S.C. 1885) 22 S.C. 534.

This section applies as well where the owner is defendant with the contractor, as where he is sole defendant. Johnson v. Frazee (S.C. 1884) 20 S.C. 500.

**SECTION 29‑5‑200.** Notice by publication or other than personal service.

If it appears to the court that any of the parties entitled to notice are absent or that they cannot probably be found or be served with the notice, the court may, instead of the personal notice before mentioned or in addition thereto, order notice given to all persons interested by publishing in some newspaper the substance of the petition with the order of the court thereon assigning the time and place for a hearing or may order such other notice to be given as may, under the circumstances of the case, be considered most proper and effectual.

HISTORY: 1962 Code Section 45‑270; 1952 Code Section 45‑270; 1942 Code Section 8745; 1932 Code Section 8745; Civ. C. ‘22 Section 5657; Civ. C. ‘12 Section 4127; Civ. C. ‘02 Section 3022; G. S. 2364; R. S. 2479; 1869 (14) 220.

CROSS REFERENCES

Service by publication or out‑of‑state, see Sections 15‑9‑710 et seq.

Library References

Mechanics’ Liens 268.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 346.

**SECTION 29‑5‑210.** Further notice of suit.

If at the time assigned for the hearing it appears to the court that any of the persons interested had not had a sufficient notice of the suit, the court may order further notice to them in such manner as may be considered most proper and effectual.

HISTORY: 1962 Code Section 45‑271; 1952 Code Section 45‑271; 1942 Code Section 8746; 1932 Code Section 8746; Civ. C. ‘22 Section 5658; Civ. C. ‘12 Section 4128; Civ. C. ‘02 Section 3023; G. S. 2365; R. S. 2480; 1869 (14) 220.

Library References

Mechanics’ Liens 268.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 346.

**SECTION 29‑5‑220.** Hearing on claims of lienors.

At the time assigned for the hearing, or within such further time as the court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property may appear and prove his claim and the owner and each of the creditors may contest the several claims of every other creditor and the court shall hear and determine them in a summary manner, either with or without a jury, as the case may require.

HISTORY: 1962 Code Section 45‑272; 1952 Code Section 45‑272; 1942 Code Section 8747; 1932 Code Section 8747; Civ. C. ‘22 Section 5659; Civ. C. ‘12 Section 4129; Civ. C. ‘02 Section 3024; G. S. 2366; R. S. 2481; 1869 (14) 220.

Library References

Mechanics’ Liens 286.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 389, 391 to 398.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

**SECTION 29‑5‑230.** Questions for jury.

Every material question of fact arising in the case shall be submitted to a jury, if required by either party or deemed proper by the court, and the trial shall be had upon a question stated or an issue framed or otherwise, as the court may order. A jury shall be had before a magistrate only as in other civil cases.

HISTORY: 1962 Code Section 45‑273; 1952 Code Section 45‑273; 1942 Code Section 8748; 1932 Code Section 8748; Civ. C. ‘22 Section 5660; Civ. C. ‘12 Section 4130; Civ. C. ‘02 Section 3025; G. S. 2367; R. S. 2482; 1869 (14) 220.

CROSS REFERENCES

Juries and jurors in Circuit Courts, see Sections 14‑7‑10 et seq.

Library References

Mechanics’ Liens 288.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 389, 391.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

NOTES OF DECISIONS

In general 1

Accord and satisfaction 2

1. In general

The finding of the jury constitutes a final determination of the amount due as in a case at law, and is binding upon the court, and not subject to review or modification. Stone & Clamp v Holmes (1950) 217 SC 203, 60 SE2d 231. Metz v Critcher (1909) 83 SC 396, 65 SE 394. Metz v Critcher (1909) 83 SC 396, 65 SE 394.

Although Section 29‑5‑230 has been held to create a mandatory right of trial by jury when requested, it does not negate the rule that a jury trial can be waived. Hodges Concrete Products, Inc. v. Fletcher (S.C.App. 1984) 284 S.C. 191, 324 S.E.2d 343.

In a mechanics’ lien action, the jury is to try disputed facts. However, if the evidence is such as to justify a motion for summary judgment or a directed verdict, a trial judge may vacate a mechanics’ lien. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

The determination of whether a claim made under a complicated construction contract was for services rendered or for damages for breach of contract is to be made by the jury. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

Failure to request a jury trial does not change the essential nature of the foreclosure proceedings established by statute. Diamond Swimming Pool Co. v. Broome (S.C. 1969) 252 S.C. 379, 166 S.E.2d 308.

Jury trial is a matter of right under this section. Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

This section confers on a circuit judge power to submit to the jury the question whether the owner owed the petitioner the amount alleged in the petition. Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

This section does not authorize the entry of judgment on the verdict, nor make it final as to the amount due under the lien, the duty to determine such amount being imposed on the court by what is now Section 29‑5‑240. Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

2. Accord and satisfaction

A genuine issue of material fact existed as to whether a contractor’s acceptance of a homeowner’s check was an accord and satisfaction, even though the check stated both on its front and back that it was “final payment,” where the contractor testified that (1) the homeowner refused to pay the additional costs claimed even before he could explain them, (2) he agreed only to discuss the disputed amounts with the architect before resubmitting the bill to the homeowner, and (3) he denied accepting the check as a full payment; thus, the evidence did not show a meeting of the minds regarding the nature of the payment. Tremont Const. Co., Inc. v. Dunlap (S.C.App. 1992) 310 S.C. 180, 425 S.E.2d 792, rehearing denied, certiorari denied.

**SECTION 29‑5‑240.** Determination of claims due but not yet payable.

The court shall ascertain and determine the amount due to each creditor who has a lien of the kind before mentioned upon the property in question and every such claim due, absolutely and without any condition, although not then payable, shall be allowed with a rebate of interest to the time when it would become payable.

HISTORY: 1962 Code Section 45‑274; 1952 Code Section 45‑274; 1942 Code Section 8749; 1932 Code Section 8749; Civ. C. ‘22 Section 5661; Civ. C. ‘12 Section 4131; Civ. C. ‘02 Section 3026; G. S. 2368; R. S. 2483; 1869 (14) 222.

Library References

Mechanics’ Liens 290.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 389, 398.

NOTES OF DECISIONS

In general 1

1. In general

Under this section, it becomes the duty of the court to ascertain the correct amount due on the claims of creditors, and this may be done with or without a jury, as provided in what is now Section 29‑5‑230. But when a jury is demanded by either or both parties to the proceeding, it is incumbent upon the court to grant a jury trial, and the court is not authorized to change or modify by its judgment the finding of the jury. Stone & Clamp, General Contractors v. Holmes (S.C. 1950) 217 S.C. 203, 60 S.E.2d 231.

Applied in Metz v. Critcher (S.C. 1909) 83 S.C. 396, 65 S.E. 394.

Additional related case, see Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

Interest not allowed, see Devereux v. Taft (S.C. 1884) 20 S.C. 555.

**SECTION 29‑5‑250.** Recovery for part performance.

When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed in proportion to the price stipulated for the whole and the court shall adjust his claim accordingly.

HISTORY: 1962 Code Section 45‑275; 1952 Code Section 45‑275; 1942 Code Section 8750; 1932 Code Section 8750; Civ. C. ‘22 Section 5662; Civ. C. ‘12 Section 4132; Civ. C. ‘02 Section 3027; G. S. 2369; R. S. 2484; 1869 (14) 222.

Library References

Mechanics’ Liens 161(2).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 196, 200.

**SECTION 29‑5‑260.** Sale of premises if lien established.

If the lien is established in favor of any of the creditors whose claims are presented the court shall order a sale of the property to be made by such officer as may be authorized by law to make sales of property.

HISTORY: 1962 Code Section 45‑276; 1952 Code Section 45‑276; 1942 Code Section 8751; 1932 Code Section 8751; Civ. C. ‘22 Section 5663; Civ. C. ‘12 Section 4133; Civ. C. ‘02 Section 3028; G. S. 2370; R. S. 2485; 1869 (14) 222.

CROSS REFERENCES

Judicial sales generally, see Sections 15‑39‑610 et seq.

Library References

Mechanics’ Liens 291(6), 294.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 402, 408 to 409, 421 to 422, 424, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

Attorney General’s Opinions

A magistrate’s constable is authorized to conduct sales as to distrained property and as to property attached which result from actions initiated in a magistrate’s court but is not authorized to conduct a sale to enforce a mechanic’s lien. While apparently there is authority for a magistrate’s constable to conduct a sale to satisfy a judgment rendered in a magistrate’s court, the preferred procedure is to have a sheriff conduct a sale resulting from such a judgment. 1979 Op. Atty Gen, No. 79‑81, p 107.

NOTES OF DECISIONS

In general 1

1. In general

It was function of Master in Equity, rather than appellate court, to determine whether foreclosure of contractors’ mechanics’ liens was appropriate in action against construction lender, to which borrower had executed deed in lieu of foreclosure that conveyed title to development properties, such that remand was required for Master to consider parties’ arguments as to disputed issues pertaining to foreclosure of mechanics’ liens and make findings of fact and conclusions of law on the record before deciding whether to order foreclosure. Moorhead Const., Inc. v. Enterprise Bank of South Carolina (S.C.App. 2014) 410 S.C. 386, 765 S.E.2d 1. Mechanics’ Liens 309

Master in Equity lacked authority to enter money judgments in favor of contractors in their action to foreclose on mechanics’ liens against construction lender, to which borrower had executed deed in lieu of foreclosure that conveyed title to development properties; contractors did not have contractual relationship with lender or any other right to recover damages, but rather contractors’ exclusive remedy against lender was foreclosure of their mechanics’ liens. Moorhead Const., Inc. v. Enterprise Bank of South Carolina (S.C.App. 2014) 410 S.C. 386, 765 S.E.2d 1. Mechanics’ Liens 246

Quoted in Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

**SECTION 29‑5‑270.** Sale of part of property.

If part of the property can be separated from the residue and sold without damage to the whole and if the value thereof is sufficient to satisfy all debts proved in the case, the court may order a sale of that part, if it appears to be most for the interest of all parties concerned.

HISTORY: 1962 Code Section 45‑277; 1952 Code Section 45‑277; 1942 Code Section 8752; 1932 Code Section 8752; Civ. C. ‘22 Section 5664; Civ. C. ‘12 Section 4134; Civ. C. ‘02 Section 3029; G. S. 2371; R. S. 2486; 1869 (14) 222.

Library References

Mechanics’ Liens 296.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 421, 425.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

**SECTION 29‑5‑280.** Notice of sale.

The officer who makes the sale shall give notice of the time and place in the manner prescribed in relation to the sale of mortgaged lands under foreclosure, unless the court orders a different notice to be given.

HISTORY: 1962 Code Section 45‑278; 1952 Code Section 45‑278; 1942 Code Section 8753; 1932 Code Section 8753; Civ. C. ‘22 Section 5665; Civ. C. ‘12 Section 4135; Civ. C. ‘02 Section 3030; G. S. 2372; R. S. 2487; 1869 (14) 222.

CROSS REFERENCES

Judicial sales generally, see Sections 15‑39‑610 et seq.

Library References

Mechanics’ Liens 296.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 421, 425.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

**SECTION 29‑5‑290.** Distribution of proceeds of sale.

If all the claims against the property covered by the lien are ascertained at the time of ordering the sale, the court may order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors to the amount of their respective debts, if there is sufficient therefor, and if there is not sufficient, then to divide and distribute such proceeds among the creditors in proportion to the amount due to each of them.

HISTORY: 1962 Code Section 45‑279; 1952 Code Section 45‑279; 1942 Code Section 8754; 1932 Code Section 8754; Civ. C. ‘22 Section 5666; Civ. C. ‘12 Section 4136; Civ. C. ‘02 Section 3031; G. S. 2373; R. S. 2488; 1869 (14) 222.

CROSS REFERENCES

As to judicial sales generally, see Sections 15‑39‑610 et seq.

Library References

Mechanics’ Liens 308.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 431.

**SECTION 29‑5‑300.** Distribution of proceeds by court.

If all the claims are not ascertained when the sale is ordered or if for any other reason the court finds it necessary or proper to postpone the order of distribution, it may direct the officer to bring the proceeds of the sale into court, there to be disposed of according to the decree of the court, and if, by reason of the claims of attaching creditors or for any other cause, the whole cannot be conveniently distributed at once the court may make two or more successive orders of distribution, as the circumstances may require.

HISTORY: 1962 Code Section 45‑280; 1952 Code Section 45‑280; 1942 Code Section 8755; 1932 Code Section 8755; Civ. C. ‘22 Section 5667; Civ. C. ‘12 Section 4137; Civ. C. ‘02 Section 3032; G. S. 2374; R. S. 2489; 1869 (14) 222.

Library References

Mechanics’ Liens 308.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 431.

**SECTION 29‑5‑310.** Distribution of surplus.

If there remain any surplus of the proceeds of the sale, after making all the payments before mentioned, it shall be forthwith paid over to the owner of the property, but such surplus, before it is so paid over, shall be liable to be attached or taken on execution in like manner as if it proceeded from a sale made by the officer on an execution.

HISTORY: 1962 Code Section 45‑281; 1952 Code Section 45‑281; 1942 Code Section 8756; 1932 Code Section 8756; Civ. C. ‘22 Section 5668; Civ. C. ‘12 Section 4138; Civ. C. ‘02 Section 3033; G. S. 2375; R. S. 2490; 1869 (14) 222.

Library References

Mechanics’ Liens 308.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 431.

**SECTION 29‑5‑320.** Prior attaching creditor is preferred.

If the interest of the owner in the building, structure or land is under attachment at the time of filing and recording the statement of the account, the attaching creditor shall be preferred to the extent of the value of the buildings and land as they were when the statement was recorded and the court shall ascertain, by a jury or otherwise as the case may require, what proportion of the proceeds of the sale shall be held subject to the attachment as derived from the value of the property when the statement was recorded.

HISTORY: 1962 Code Section 45‑282; 1952 Code Section 45‑282; 1942 Code Section 8757; 1932 Code Section 8757; Civ. C. ‘22 Section 5669; Civ. C. ‘12 Section 4139; Civ. C. ‘02 Section 3034; G. S. 2376; R. S. 2491; 1869 (14) 223.

Library References

Mechanics’ Liens 201.

Westlaw Topic No. 257.

C.J.S. Garnishment Section 204.

C.J.S. Mechanics’ Liens Section 241.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

**SECTION 29‑5‑330.** Distribution of proceeds where there is attaching creditor.

If the attaching creditor recovers judgment he shall be entitled to receive on his execution the proportion of the proceeds held subject to his attachment, or so much thereof as may be necessary to satisfy his execution, and the residue of the proceeds shall be applied in the same manner as if there had been no such attachment.

HISTORY: 1962 Code Section 45‑283; 1952 Code Section 45‑283; 1942 Code Section 8758; 1932 Code Section 8758; Civ. C. ‘22 Section 5670; Civ. C. ‘12 Section 4140; Civ. C. ‘02 Section 3035; G. S. 2377; R. S. 2492; 1869 (14) 223.

Library References

Mechanics’ Liens 201, 308.

Westlaw Topic No. 257.

C.J.S. Garnishment Section 204.

C.J.S. Mechanics’ Liens Sections 241, 431.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

**SECTION 29‑5‑340.** Subsequent attachments.

If the interest of the owner of the property is attached after the recording of the statement, the proceeds, after discharging all prior liens and claims, shall be applied to satisfy the execution of such attaching creditor.

HISTORY: 1962 Code Section 45‑284; 1952 Code Section 45‑284; 1942 Code Section 8759; 1932 Code Section 8759; Civ. C. ‘22 Section 5671; Civ. C. ‘12 Section 4141; Civ. C. ‘02 Section 3036; G. S. 2378; R. S. 2493; 1869 (14) 223.

Library References

Mechanics’ Liens 201.

Westlaw Topic No. 257.

C.J.S. Garnishment Section 204.

C.J.S. Mechanics’ Liens Section 241.

**SECTION 29‑5‑350.** Attachments intervening between two liens.

If an attachment is made after the recording of such statement and if, after the attachment, another like statement is recorded, the creditor in the latter statement shall be entitled to be paid only out of the residue of the proceeds remaining after paying all that is due on the demand a statement of which was recorded before the attachment and satisfying the attaching creditor.

HISTORY: 1962 Code Section 45‑285; 1952 Code Section 45‑285; 1942 Code Section 8760; 1932 Code Section 8760; Civ. C. ‘22 Section 5672; Civ. C. ‘12 Section 4142; Civ. C. ‘02 Section 3037; G. S. 2379; R. S. 2494; 1869 (14) 223.

CROSS REFERENCES

Attachment generally, see Sections 15‑19‑10 et seq.

Attachment lien generally on real estate, see Section 15‑19‑240.

Lien of attachment in action for purchase money, see Section 15‑19‑540.

Library References

Mechanics’ Liens 201.

Westlaw Topic No. 257.

C.J.S. Garnishment Section 204.

C.J.S. Mechanics’ Liens Section 241.

**SECTION 29‑5‑360.** Rights of creditors among themselves.

When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their attachments. But when several creditors who are entitled to the lien provided for in this chapter have equal rights as between themselves and the fund is insufficient to pay the whole, they shall share it equally in proportion to their respective debts.

HISTORY: 1962 Code Section 45‑286; 1952 Code Section 45‑286; 1942 Code Section 8761; 1932 Code Section 8761; Civ. C. ‘22 Section 5673; Civ. C. ‘12 Section 4143; Civ. C. ‘02 Section 3038; G. S. 2380; R. S. 2495; 1869 (14) 223.

Library References

Mechanics’ Liens 201.

Westlaw Topic No. 257.

C.J.S. Garnishment Section 204.

C.J.S. Mechanics’ Liens Section 241.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

**SECTION 29‑5‑370.** Persons against whom lien may be enforced when debtor dies or conveys his interest.

If the person indebted dies or conveys away his estate or interest before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs or whoever holds the estate or interest which he had in the premises at the time the labor or materials were performed or furnished. Or, if a suit is commenced in his lifetime, it may be prosecuted against his executors, administrators, heirs or assigns in like manner as if the estate or interest had been mortgaged to secure the debt.

HISTORY: 1962 Code Section 45‑287; 1952 Code Section 45‑287; 1942 Code Section 8763; 1932 Code Section 8763; Civ. C. ‘22 Section 5675; Civ. C. ‘12 Section 4145; Civ. C. ‘02 Section 3040; G. S. 2382; R. S. 2497; 1869 (14) 223.

Library References

Mechanics’ Liens 263(4), 263(5).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 333 to 334.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

NOTES OF DECISIONS

In general 1

1. In general

A mechanic’s lien was not enforceable against one who had purchased the property prior to the recording of the lien, despite the provision of Section 30‑7‑10 that a purchaser for value without notice takes free of unfiled mechanic’s liens “except as otherwise provided by statute,” since Section 29‑5‑370 merely permits the bringing of an action to enforce a lien against a subsequent purchaser and does not address the issue of priority between a subsequent purchaser and a person performing labor or furnishing materials. The Lite House, Inc. v. J.C. Roy Co., Inc. (S.C.App. 1992) 309 S.C. 50, 419 S.E.2d 817.

**SECTION 29‑5‑380.** Executor or administrator may enforce creditor’s lien.

If a creditor dies before the commencement of the suit, the suit may be commenced and prosecuted by his executor or administrator or, if commenced in his lifetime, it may be prosecuted by them as it might have been by the deceased, if living.

HISTORY: 1962 Code Section 45‑288; 1952 Code Section 45‑288; 1942 Code Section 8764; 1932 Code Section 8764; Civ. C. ‘22 Section 5676; Civ. C. ‘12 Section 4146; Civ. C. ‘02 Section 3041; G. S. 2383; R. S. 2498; 1869 (14) 223.

Library References

Mechanics’ Liens 255, 262(1).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 331, 333.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

**SECTION 29‑5‑390.** Suits begun by one creditor may be prosecuted by another.

If it appears in any stage of the proceedings that the suit was commenced by the petitioning creditor before his right of action accrued or after it was barred or if he becomes nonsuited or fails to establish his claims the suit may be prosecuted by any other creditor having such lien in the same manner as if it had been originally commenced by him, if the circumstances of the case are such that he might then or at any time after the commencement of the original suit have commenced a like suit on his own claim.

HISTORY: 1962 Code Section 45‑289; 1952 Code Section 45‑289; 1942 Code Section 8765; 1932 Code Section 8765; Civ. C. ‘22 Section 5677; Civ. C. ‘12 Section 4147; Civ. C. ‘02 Section 3042; G. S. 2384; R. S. 2499; 1869 (14) 223.

Library References

Mechanics’ Liens 255.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 331.

**SECTION 29‑5‑400.** Allowance of claim and costs of petitioning creditor.

If the suit is commenced by the petitioning creditor before his right of action accrues, his claim may nevertheless be allowed if the suit is carried on by any other creditor, as provided in Section 29‑5‑390, but he shall not in such case be entitled to costs and he may be required to pay the costs incurred by the debtor or such part thereof as the court may deem reasonable.

HISTORY: 1962 Code Section 45‑290; 1952 Code Section 45‑290; 1942 Code Section 8766; 1932 Code Section 8766; Civ. C. ‘22 Section 5678; Civ. C. ‘12 Section 4148; Civ. C. ‘02 Section 3043; G. S. 2385; R. S. 2500; 1869 (14) 224.

Library References

Mechanics’ Liens 310.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 432 to 436.

**SECTION 29‑5‑410.** Costs.

The costs, in all other respects, shall be subject to the discretion of the court and shall be paid from the proceeds of the sale or by any of the parties to the suit, as justice and equity require.

HISTORY: 1962 Code Section 45‑291; 1952 Code Section 45‑291; 1942 Code Section 8767; 1932 Code Section 8767; Civ. C. ‘22 Section 5679; Civ. C. ‘12 Section 4149; Civ. C. ‘02 Section 3044; G. S. 2386; R. S. 2501; 1869 (14) 224.

Library References

Mechanics’ Liens 310.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 432 to 436.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

1. In general

In a foreclosure action, an award of attorneys fees is proper under Section 29‑5‑410 where a contract providing for arbitration includes a reservation of rights and the lienor must bring a foreclosure action to enforce an arbitration award. Stanley Smith & Sons, Inc. v. Dumas (S.C.App. 1993) 315 S.C. 30, 431 S.E.2d 595. Mechanics’ Liens 310(3)

Where a contract providing for arbitration includes a reservation of rights otherwise available by law, and the lienor must bring a foreclosure action to enforce an arbitration award, an award of attorney fees is proper under Section 29‑5‑410. Sentry Engineering and Const., Inc. v. Mariner’s Cay Development Corp. (S.C. 1985) 287 S.C. 346, 338 S.E.2d 631. Mechanics’ Liens 310(3)

$639.18 was proper attorney fee in action to enforce mechanic’s lien where successful party set out no particular reasons to justify his contention that the award was too low, relying merely on time involved without citation of authority. Hodge v. First Federal Sav. and Loan Ass’n of Spartanburg (S.C. 1976) 267 S.C. 270, 227 S.E.2d 310.

**SECTION 29‑5‑420.** Civil action not barred.

Nothing contained in this chapter shall be construed to prevent a creditor in such contract from maintaining an action thereon in like manner as if he had no such lien for the security of his debt.

HISTORY: 1962 Code Section 45‑292; 1952 Code Section 45‑292; 1942 Code Section 8768; 1932 Code Section 8768; Civ. C. ‘22 Section 5680; Civ. C. ‘12 Section 4150; Civ. C. ‘02 Section 3045; G. S. 2387; R. S. 2502; 1869 (14) 224.

CROSS REFERENCES

Civil remedies generally, see Sections 15‑1‑10 et seq.

Library References

Mechanics’ Liens 246.

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Section 309.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Tenny v. Anderson Water, Light & Power Co. (S.C. 1903) 67 S.C. 11, 45 S.E. 111.

**SECTION 29‑5‑430.** Recording discharge or release of lien.

When a debt secured by such a lien is fully paid, the creditor, at the expense of the debtor, shall enter on the margin of the registry where the statement is recorded a discharge of his lien or shall execute a release thereof, which may be recorded where the statement is recorded.

HISTORY: 1962 Code Section 45‑293; 1952 Code Section 45‑293; 1942 Code Section 8769; 1932 Code Section 8769; Civ. C. ‘22 Section 5681; Civ. C. ‘12 Section 4151; Civ. C. ‘02 Section 3046; G. S. 2388; R. S. 2503; 1869 (14) 224.

Library References

Mechanics’ Liens 242.

Westlaw Topic No. 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 8, Payment.

S.C. Jur. Mechanics’ Liens Section 2, Definition.

S.C. Jur. Mechanics’ Liens Section 24, Discharge and Bonding Off.

Treatises and Practice Aids

8 Causes of Action 2d 749, Cause of Action Against Lessor of Realty to Enforce Construction Lien Based on Work Done Under Contract With Lessee.

LAW REVIEW AND JOURNAL COMMENTARIES

Mechanics’ Liens in South Carolina. 25 S.C. L. Rev. 817.

**SECTION 29‑5‑440.** Suit on payment bond.

Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of work provided for in any contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, “bonded contractor” means a contractor or subcontractor furnishing a payment bond, and “remote claimant” means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

This section shall apply to any payment bond, whether statutory, public, common law, or private in nature, that is issued in connection with a construction project or other improvements to real property within South Carolina when such payment bonds are not otherwise required or governed by any other applicable section of the South Carolina Code of Laws.

For the purposes of this section:

(1) “Statutory bonds” or “public bonds” means bonds that are either:

(a) provided because required by statute and in accordance with the minimum guidelines set forth in this section; or

(b) contain either express or implied reference to the provisions of this section.

(2) “Common law bonds” or “private bonds” means bonds that are either:

(a) not required by statute, such as a bond voluntarily provided to meet a contractual agreement between parties; or

(b) required by statute but that specifically deviates from the statutory requirements to provide broader protection.

HISTORY: 2000 Act No. 240, Section 1; 2014 Act No. 264 (S.1026), Section 1, eff June 6, 2014.

Effect of Amendment

2014 Act No. 264, Section 1, in the second paragraph, substituted “must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail” for “shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,”; in the fourth paragraph, inserted “or supplier” in the first sentence, and added the second sentence, relating to rights and defenses; and added the paragraphs following the fourth paragraph.

CROSS REFERENCES

Effect of failure to file notice of project commencement, see Section 29‑5‑23.

Library References

Indemnity 33(5).

Westlaw Topic No. 208.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 19, Procedure.

Notes of Decisions

In general 1

Summary judgment 2

1. In general

Payment bond that primary subcontractor obtained from surety in connection with a high school construction project was a common‑law bond, not a statutory bond under the statute governing lawsuits on payment bonds, and thus tertiary subcontractor that filed a claim to collect on the bond was not required to comply with the statute’s notice requirements, given that the bond did not mention the statute or any notice requirements; the bond was required not by statute but by primary subcontractor’s contract with the project’s general contractor. Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc. (S.C. 2013) 406 S.C. 294, 750 S.E.2d 921. Education 162; Public Contracts 227(1)

“Common‑law payment bonds” in construction cases are either (1) any bond not required by statute (i.e., voluntarily provided, perhaps to meet a contractual provision in the agreement between the parties) or (2) any bond required by statute but that specifically varies the statutory requirements so as to provide broader protection. Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc. (S.C. 2013) 406 S.C. 294, 750 S.E.2d 921. Public Contracts 208

“Statutory payment bonds” in construction cases are those either (1) provided because required by statute and in accordance with the minimum guidelines set out in the statute governing lawsuits on payment bonds or (2) that contain express or implied reference to the provisions detailed in the statute. Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc. (S.C. 2013) 406 S.C. 294, 750 S.E.2d 921. Public Contracts 208

2. Summary judgment

Genuine issue of material fact existed as to whether tertiary subcontractor satisfied the notice requirements of the statute governing lawsuits on payment bonds, precluding summary judgment on tertiary subcontractor’s claim to collect on a payment bond that primary subcontractor obtained from surety in connection with a high school construction project, even assuming that the claim was subject to the statute’s notice provisions. Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc. (S.C. 2013) 406 S.C. 294, 750 S.E.2d 921. Judgment 181(19)