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GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 44A. STATUTORY LIENS AND CHARGES
ARTICLE 2. STATUTORY LIENS ON REAL PROPERTY
PART 1. LIENS OF MECHANICS, LABORERS, AND MATERIALMEN DEALING WITH OWNER

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N.C. Gen. Stat. § 44A-12 (2009)

§ 44A-12. Filing claim of lien on real property

(a) Place of Filing. -- All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. -- Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

(c) Contents of Claim of Lien on Real Property to Be Filed. -- All claims of lien on real property must be filed using a form substantially as follows:

CLAIM OF LIEN ON REAL PROPERTY

(1) Name and address of the person claiming the claim of lien on real property:

(2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is filed:

(3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference

to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)

(4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:

(5) Date upon which labor or materials were first furnished upon said property by the claimant:

(5a) Date upon which labor or materials were last furnished upon said property by the claimant:

(6) General description of the labor performed or materials furnished and the amount claimed therefor:

Lien Claimant

Filed this day of ,

Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.

(d) No Amendment of Claim of Lien on Real Property. -- A claim of lien on real property may not be amended. A claim of lien on real property may be cancelled by a claimant or the claimant's authorized agent or attorney and a new claim of lien on real property substituted therefor within the time herein provided for original filing.

(e) Notice of Assignment of Claim of Lien on Real Property. -- When a claim of lien on real property has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note the assignment in the margin of the judgment docket containing the claim of lien on real property. Thereafter the assignee becomes the lien claimant of record.

(f) Waiver of Right to File, Serve, or Claim Liens as Consideration for Contract Against Public Policy. -- An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any contract, either expressed or implied, for the making of an improvement upon real property under this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

HISTORY: 1969, c. 1112, s. 1; 1977, c. 369; 1983, c. 888; 1999-456, s. 59; 2005-229, s. 1.

NOTES: EDITOR'S NOTE. --This section, as amended by Session Laws 2005-229, s. 1, effective October 1, 2005, is applicable to claims of lien on real property filed and notices of claims of lien upon funds served on or after that date.

LEGAL PERIODICALS. --For article, "Transferring North Carolina Real Estate Part I: How the Present System

Functions," see 49 *N.C.L. Rev.* 418 (1971).

For comment, "Offer to Purchase and Contract: Buyer Beware," see 8 *Campbell L. Rev.* 473 (1986).

For article, "North Carolina's Real Estate Recording Laws: The Ghost of 1885," see 28 *N.C. Cent. L.J.* 199 (2006).

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Mechanic & Contractor Liens

CASE NOTES

A LIEN IS LOST IF THE STEPS REQUIRED TO PERFECT IT ARE NOT TAKEN IN THE SAME MANNER AND WITHIN THE TIME PRESCRIBED by law. *Strickland v. General Bldg. & Masonry Contractors*, 22 *N.C. App.* 729, 207 *S.E.2d* 399 (1974).

Plaintiff was not entitled to enforce by means of its second lien an obligation which was asserted but not enforced in its first lien where plaintiff's second claim of lien contained incorrect statements concerning the date of first furnishings, and the alleged amount owed; thus the claim was defective. Plaintiff also failed to cancel this second lien and substitute a new claim of lien containing the correct information within the prescribed time. *Gaston Grading & Landscaping v. Young*, 116 *N.C. App.* 719, 449 *S.E.2d* 475 (1994).

FILING IS REQUIRED. --Although a second tier subcontractor must notice its claim of lien using a format substantially similar to that provided in *G.S. 44A-19*, perfection of this lien is not achieved merely upon proper notice; the claim of lien must also be filed pursuant to this section before it is considered perfected. *Cameron & Barkley Co. v. American Ins. Co.*, 112 *N.C. App.* 36, 434 *S.E.2d* 632 (1993).

FIRST FURNISHING. --The judgment in defendant's favor properly ordered a sale of the property to enforce defendant's statutory lien, and the lien related back to the date of the first furnishing listed in the claim of lien and judgment even though the court failed to include the beginning date of the work. *Metropolitan Life Ins. Co. v. Rowell*, 113 *N.C. App.* 779, 440 *S.E.2d* 283, rev'd on other grounds, 115 *N.C. App.* 152, 444 *S.E.2d* 231, cert. denied, 338 *N.C.* 518, 452 *S.E.2d* 813 (1994).

DELIVERY OF MATERIALS TO SITE. --The lien claimant is not required to personally make delivery of materials to the site of the improvement so long as the materialman furnished the goods with the intent that they would later be placed on the site and they were so placed. The lien, when properly perfected, will relate to and take effect from the first furnishing of materials on the site. *Raleigh Paint & Wallpaper Co. v. Peacock & Assocs.*, 38 *N.C. App.* 144, 247 *S.E.2d* 728 (1978), cert. denied, 296 *N.C.* 415, 251 *S.E.2d* 470 (1979); *Queensboro Steel Corp. v. East Coast Mach. & Iron Works, Inc.*, 82 *N.C. App.* 182, 346 *S.E.2d* 248, cert. denied, 318 *N.C.* 508, 349 *S.E.2d* 865 (1986).

DATE IN CLAIM OF LIEN IS BINDING. --Barring an obvious error, easily discernible to the title examiner, the plaintiff is bound by the date stated in his claim of lien. *Beach & Adams Bldrs., Inv. v. Northwestern Bank*, 28 *N.C. App.* 80, 220 *S.E.2d* 414 (1975).

The plaintiff was not entitled to amend or change the date of last furnishing stated in his claim of lien, where such date, on its face, was not an obvious typographical error, and as the claim of lien was filed more than 120 days after the last date of furnishing, it was void and subject to cancellation. *Brown v. Middleton*, 86 *N.C. App.* 63, 356 *S.E.2d* 386 (1987).

CONTENTS. --A claim of lien need only identify the owner, the claimant, and the party with which the claimant contracted. Thus, while plaintiff's claim of lien met the requirements of this section, the claim of lien did not meet the requirements of *G.S. 44A-19*, because the claim of lien did not name defendant or assert rights available to plaintiff via

a notice of claim of lien. *Universal Mechanical, Inc. v. Hunt*, 114 N.C. App. 484, 442 S.E.2d 130 (1994).

Description contained in a claim of lien filed by a supplier of labor and materials for installation of a paper machine and additional work substantially complied with G.S. 44A-12(c)(6) because, although the description referred only to installation of a paper machine, the reference was sufficient to put parties on notice regarding the project that included the installation of a paper machine and to provide notice as to the other work provided by the supplier in the course of that project. All *Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.)*, 393 B.R. 372 (Bankr. M.D.N.C. 2008).

Description contained in a claim of lien filed by a supplier of stainless steel piping, tubing and fittings, valves, controls and process equipment substantially complied with G.S. 44A-12(c)(6) because, although the supplier erroneously described that the materials were to be used in the plumbing/sewer/water system of the customer's plant, the description was not misleading and was sufficient to put an interested party on notice regarding the materials supplied which were part of a piping system located within the plant. All *Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.)*, 393 B.R. 372 (Bankr. M.D.N.C. 2008).

BUT A CLAIM OF LIEN IS NOT FATALY DEFECTIVE BECAUSE OF AN OBVIOUS SCRIVENER'S ERROR in stating the date of first furnishing it. *Canady v. Creech*, 288 N.C. 354, 218 S.E.2d 383 (1975).

Where a claim of lien for labor and materials in connection with the construction of a dwelling on certain property was filed on October 8, 1973, within 120 days from the last day the materials and supplies were furnished, but the claim of lien erroneously recited that the labor and materials were first furnished on December 4, 1973, and where on August 20, 1973, the property was conveyed, the erroneous statement in the claim of lien as to the date of first furnishing did not preclude enforcement of the lien against the purchasers, since they had constructive notice of the facts upon which the claim of lien was based and could not take advantage of a scrivener's error in the claim relative to these facts and upon which they did not rely to defeat the lien, which, because of these facts, related back to a time that predated their purchase. *Canady v. Creech*, 288 N.C. 354, 218 S.E.2d 354 (1975).

PROVISION OF CONTRACT BETWEEN DEBTOR AND CONTRACTOR in which the contractor warrants that title to all work, materials and equipment is free and clear of all liens, claims, security interest or encumbrances if construed as a complete waiver of statutory lien rights, was invalid and unenforceable under North Carolina law. *Southeastern Sav. & Loan Ass'n v. Rentenbach Constructors, Inc.*, 114 Bankr. 441 (E.D.N.C. 1989), aff'd per curiam, 907 F.2d 1139 (4th Cir. 1990).

CLAIM OF MATERIALMAN, ETC., NEED NOT STATE DATE OF LAST FURNISHING. --Although this section clearly requires that a lien be filed within 120 days after the last furnishing of labor or materials, there is no requirement that a mechanic, laborer, or materialman state in his claim of lien the date of the last furnishing. *Strickland v. General Bldg. & Masonry Contractors*, 22 N.C. App. 729, 207 S.E.2d 399 (1974).

LAST DAY OF WORK. --Supplier of materials to a Chapter 11 debtor on open account did not file a timely notice of claim of lien because the notice was filed outside the 120 days allowed by G.S. 44A-12; the removal of trailers containing the debtor's supplies was insufficient to constitute last work for purposes of G.S. 44A-12 because the removal was not required under any aspect of the contractual arrangement between the debtor and the supplier, and the removal was not done in good faith. All *Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.)*, 393 B.R. 372 (Bankr. M.D.N.C. 2008).

NOTICE OF CLAIM OF LIEN. --A claim of lien may not serve as a notice of claim of lien because a notice of claim of lien must identify all the parties in the "contractual chain" between the claimant and the owner. *Universal Mechanical, Inc. v. Hunt*, 114 N.C. App. 484, 442 S.E.2d 130 (1994).

TIMELY NOTICE OF CLAIM OF LIEN. --Suppliers of materials to a Chapter 11 debtor on open account timely filed notices of claim of lien because the notices were filed within the 120 days allowed by G.S. 44A-12. All *Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.)*, 393 B.R. 372 (Bankr. M.D.N.C. 2008).

LIEN HELD VOID. --Where plaintiff, in claim of lien, stated that materials were last furnished upon the property on March 28, 1973, which date was more than 120 days prior to July 27, 1973, when the claim was filed, the lien itself was void. *Strickland v. General Bldg. & Masonry Contractors*, 22 N.C. App. 729, 207 S.E.2d 399 (1974).

WAIVER OF LIEN RIGHTS. --Where a Chapter 11 debtor executed a note in favor of a contractor, who supplied the debtor with materials, in order to cover past due amounts owed on an open account, the supplier waived pursuant to G.S. 44A-12(b) its statutory lien rights under G.S. 44A-11, as to materials delivered prior to the execution of the note, because the maturity date of the note, i.e., the date on which the last payment on the note was due, was outside of the 120-day claim of lien perfection period. All *Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.)*, 393 B.R. 372 (Bankr. M.D.N.C. 2008).

APPLIED in *Frank H. Conner Co. v. Spanish Inns Charlotte, Ltd.*, 294 N.C. 661, 242 S.E.2d 785 (1978); *Wolfe v. Hewes*, 41 N.C. App. 88, 254 S.E.2d 204 (1979); *RDC, Inc. v. Brookleigh Bldrs., Inc.*, 309 N.C. 182, 305 S.E.2d 722 (1983); *Mauney v. Morris*, 73 N.C. App. 589, 327 S.E.2d 248 (1985); *Lynch v. Price Homes, Inc.*, 156 N.C. App. 83, 575 S.E.2d 543 (2003).

CITED in *Metropolitan Life Ins. Co. v. Rowell*, 115 N.C. App. 152, 444 S.E.2d 231, cert. denied, 338 N.C. 518, 452 S.E.2d 813 (1994); *J.F. Wilkerson Contracting Co. v. Rowland*, 29 N.C. App. 722, 225 S.E.2d 840 (1976); *Ridge Community Investors, Inc. v. Berry*, 293 N.C. 688, 239 S.E.2d 566 (1977); *Ridge Community Investors, Inc. v. Berry*, 32 N.C. App. 642, 234 S.E.2d 6 (1977); *Miller v. Lemon Tree Inn of Roanoke Rapids, Inc.*, 32 N.C. App. 524, 233 S.E.2d 69 (1977); *RDC, Inc. v. Brookleigh Bldrs., Inc.*, 60 N.C. App. 375, 299 S.E.2d 448 (1983); *Trustees of Garden of Prayer Baptist Church v. Geraldco Bldrs., Inc.*, 78 N.C. App. 108, 336 S.E.2d 694 (1985); *Contract Steel Sales, Inc. v. Freedom Constr. Co.*, 84 N.C. App. 460, 353 S.E.2d 418 (1987); *Mill-Power Supply Co. v. CVM Assocs.*, 85 N.C. App. 455, 355 S.E.2d 245 (1987); *Blalock Elec. Co. v. Grassy Creek Dev. Corp.*, 99 N.C. App. 440, 393 S.E.2d 354 (1990); *Dalton Moran Shook, Inc. v. Pitt Dev. Co.*, 113 N.C. App. 707, 440 S.E.2d 585 (1994); *Stewart Enters. v. MRM Constr. Co.*, 116 N.C. App. 604, 449 S.E.2d 20 (1994); *Vance Constr. Co. v. Duane White Land Corp.*, 120 N.C. App. 401, 462 S.E.2d 814 (1995); *Johnson Neurological Clinic, Inc. v. Kirkman*, 121 N.C. App. 326, 465 S.E.2d 32 (1996); *Paving Equip. of Carolinas, Inc. v. Waters*, 122 N.C. App. 502, 470 S.E.2d 546 (1996); *Park East Sales, LLC v. Clark-Langley, Inc.*, 186 N.C. App. 198, 651 S.E.2d 235 (2007); *Schafer v. Carolina Kitchen & Bath, Inc. (In re Orndorff Constr., Inc.)*, 394 B.R. 372 (Bankr. M.D.N.C. 2008).