

2007 Construction Law Workshop for Educators

Liens on Real Property
in North Carolina

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Hypothetical

The Construction Project Begins

- Hal and Happy Homeowner
 - Own one acre
 - 123 Candy Apple Lane, Raleigh, NC 27716
- Andy Architect
 - Prepares plans for their dream house and will inspect
- Cathy Construction Worker
 - Will serve as general contractor
- Polly Plumber
 - Will be a subcontractor to Cathy and will perform all of the plumbing work
- Mary Materials
 - Will supply the plumbing materials to Polly

Hypothetical

The Construction Project Begins

- Hal and Happy contract with Cathy to build their home
- The cost of construction will be \$100,000.00
- Cathy asks Polly to install the plumbing at a cost of \$15,000.00
- Polly buys \$8,000.00 worth of plumbing supplies from Mary

Hypothetical

The Construction Project Continues

- Cathy fails to pay Polly for the fully installed plumbing work
- Polly can not pay Mary for the supplies

Hypothetical The Construction Project

- In this scenario, who has lien rights and what should they do?

Answer: Consult a Lawyer!

- But a lot of people cannot afford to do that, so what should Polly and Mary do?

Contract

- What is a contract?
 - An agreement about work to be performed or materials to be supplied
 - Between different parties
 - Express or implied
 - Written or oral
 - Key terms:
 - Task to be performed
 - Price

Property

- Types of property?
 - Personal
 - Not land; and
 - Not attached to land (watch out for trailers)
 - Real
 - Land; and
 - Things attached to land

Lien on Real Property

- What is a lien on real property?
 - A lien holds land hostage until someone pays money that is owed
 - In some cases, a lien claimant can actually force the sale of the land to have the debt paid
 - State law governs liens (North Carolina General Statutes Chapter 44A, Article 2)
 - State law does not allow liens to be placed on public property

Basis of a Lien

- What activities can be the basis of a lien?
 - Acts that improve real property
 - Performing construction work on property as either a general contractor or a subcontractor (Cathy and Polly)
 - Furnishing materials for work performed on real property (Mary)
 - Providing professional services for work performed on real property (Andy)

Claim of Lien

- What does a claim of lien look like?
 - Note:
 - Filed by a general contractor and by a subcontractor (as part of subcontractors Notice of Claim of Lien)
 - MUST BE FILED WITHIN 120 DAYS OF THE DATE OF LAST FURNISHING LABOR, MATERIALS OR SERVICES TO THE SITE OF AN IMPROVEMENT TO REAL PROPERTY

Claim of Lien

- Elements
 - Caption
 - Title
 - Introduction
 - Name and address of the lien claimant
 - Name and address of property owner
 - Description of the property
 - Who claimant contracted with
 - Date that the labor or materials were first furnished
 - Date upon which labor or materials were last furnished
 - Description of the work or materials furnished
 - Signature of claimant or claimant's attorney
- Must be filed in superior court in the county where the property is located

Claim of Lien

- Perfecting a claim of lien
 - What does that mean?
 - Keeps the lien alive
 - Provides a forum for resolving the payment dispute
 - Perfect by filing a lawsuit (a Complaint)
 - LAWSUIT MUST BE FILED WITHIN 180 DAYS OF LAST FURNISHING LABOR AND MATERIALS

Claim of Lien

- How can a Property Owner Remove a Lien from the Property?
 - Ask the Clerk to remove the lien
 - Lien claimant can discharge the lien
 - Court can order the cancellation of a lien
 - Owner can bond off or deposit money with the Court

Notice of Claim of Lien

- What Does a Notice of Claim of Lien on Funds Look Like?
 - This is a lien on money
 - Limited to the funds owed to the party with whom the claimant contracted
 - This does not have to be filed with the superior court clerk
 - Must be filed within 3 years of when the breach of contract occurred

Notice of Claim of Lien

- Elements
 - Caption
 - Title
 - Introduction
 - Name and address of the Owner, General Contractor and Subcontractors above the claimant
 - Description of the property
 - Description of the contract and the entity against whose interest the lien against funds is claimed
 - Amount of lien claimed
 - Signature of the claimant or claimant's attorney

Notice of Claim of Lien

- Must be personally delivered to the other parties or sent by certified mail
- Those receiving the Notice are then under an obligation to hold funds claimed by the lien claimant
- If payment is made after receiving notice, can become personally liable

ATTACHMENT A

NORTH CAROLINA

_____ **COUNTY**

CLAIM OF LIEN

PLEASE TAKE NOTICE that the undersigned Lien Claimant, _____, being a subcontractor asserting rights under North Carolina General Statute sections 44A-20(d) and 44A-23, claims a lien on the real property described herein:

1. Name and address of the person claiming the lien:

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

3. Description of the real property upon which the lien is claimed:

For a more complete description of the real property upon which the lien is claimed, reference is hereby made to the deed recorded in Book _____, Page _____, of the _____ County Registry, North Carolina.

4. Name and address of the person with whom the Lien Claimant contracted for the furnishing of labor or materials:

5. Date upon which labor or materials were first furnished upon said property by the Lien Claimant:

6. Date upon which labor or materials were last furnished upon said property:

7. General description of the labor performed or materials furnished:

8. The amount of lien claimed pursuant to the above described contract:

_____ and 00/100 Dollars
(\$ _____), plus interest and costs.

9. Lien Claimant claims a right of subrogation to the lien rights held by _____ on the real property. In addition, a copy of the NOTICE OF CLAIM OF LIEN served on the Owner pursuant to North Carolina General Statute sections 44A-17 *et seq.* is attached hereto as Exhibit A, with accompanying affidavit of proof of service attached hereto as Exhibit B, and Lien Claimant believes that the Owner has or may become personally liable to Lien Claimant by improperly paying funds to the General Contractor following receipt of the NOTICE OF CLAIM OF LIEN.

This the ___ day of _____, 2003.

NAME OF LIEN CLAIMANT
ADDRESS

By: _____
AUTHORIZED OFFICER
ADDRESS
TELEPHONE NUMBER

ATTACHMENT B

NORTH CAROLINA

_____ **COUNTY**

**NOTICE OF CLAIM OF LIEN ON FUNDS
BY SUBCONTRACTOR**

PLEASE TAKE NOTICE that the undersigned Lien Claimant, _____, claims a lien on funds owed to the general contractor and to each subcontractor against or through whom this claim is made. Upon receipt of this lien on funds you may not make any further payments to any of these parties unless you retain from such payments an amount sufficient to satisfy in full the lien on funds claimed herein. Failure to withhold sums as required may result in direct liability to the Lien Claimant.

To: OWNER:

GENERAL CONTRACTOR:

SUBCONTRACTOR:

1. General description of real property where labor performed or material furnished:

For a more complete description of the real property upon which the lien is claimed, reference is hereby made to the deed recorded in Book _____, Page _____, of the _____ County Registry, North Carolina.

2. General description of the undersigned Lien Claimant's contract including names of the parties thereto:

3. The amount of lien claimed pursuant to the above described contract:

_____ and 00/100 Dollars
(\$ _____), plus interest and costs.

4. The undersigned Lien Claimant gives this **NOTICE OF CLAIM OF LIEN ON FUNDS** pursuant to North Carolina law and claims all rights of subrogation to which it is entitled under Part 2 of Article 2 of Chapter 44A of the North Carolina General Statutes.

This the ___ day of _____, 2003.

NAME OF LIEN CLAIMANT
ADDRESS

By: _____
AUTHORIZED OFFICER
ADDRESS
TELEPHONE NUMBER

ATTACHMENT C

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

_____ COUNTY

File No. _____

_____ (Owner),)

Plaintiff,)

v.)

_____ (General Contractor) and)

_____ (Subcontractor(s)),)

Defendants.)

COMPLAINT

Plaintiff, _____ (“_____”), complaining of the defendants alleges and says:

1. _____ is a corporation organized and existing under the laws of the State of _____, with its principal place of business in _____, _____, and is authorized to do business in the State of _____.

2. On information and belief, defendant _____ (“_____”) is a corporation organized and existing under the laws of a state other than _____.

3. On information and belief, defendant _____ (“_____”), is a corporation organized and existing under the laws of the State of _____, with its principal place of business in _____, _____.

4. On information and belief, _____ (“Owner”) is the owner of certain real property located in _____ County, _____, upon which _____ contracted with _____ as a general contractor (“General Contractor”), pursuant to a contract, to perform improvements consisting of _____. Said real property is, described in a Claim of Lien filed with the Clerk of Court of _____ County by _____ on _____, _____.

5. General Contractor entered into a contract with _____ to perform as subcontractor ("Subcontractor") on the above project, and Subcontractor contributed labor and materials to the improvement of the real property.

6. Subcontractor performed all of the required work under the subcontract and on _____, _____, the sum of \$ _____ became due and owing from General Contractor to Subcontractor.

7. Pursuant to the terms of the subcontract, interest on unpaid balances accrues at the sum of _____% per month until paid.

8. General Contractor has refused to pay Subcontractor any of the sums due and owing under the subcontract.

CLAIM AGAINST

9. Paragraphs 1-8 are incorporated herein by reference.

10. Subcontractor is entitled to recover from General Contractor the sum of \$ _____ plus interest at the rate of _____% per month from _____, _____, until paid.

CLAIM AGAINST

11. Paragraphs 1-8 are incorporated herein by reference.

COUNT I

12. Within the proper time period in _____, _____, Subcontractor sent to Owner a Notice of Claim of Lien pursuant to Chapter 44A of the North Carolina General Statutes.

13. Owner received the Notice of Claim of Lien.

14. Subcontractor is entitled to a lien upon the funds, if any remaining, in the hands of Owner and due and owing to General Contractor, and is entitled to be paid out of such funds an

amount not less than \$_____ plus interest at the rate of _____% per month from _____, _____.

COUNT II

15. On information and belief, after receipt of Subcontractor's Notice of Claim of Lien, Owner paid General Contractor and refused to withhold monies from General Contractor as required by statute.

16. By operation of law, therefore, Owner became personally liable to Subcontractor for the amount of Subcontractor's claim, and Subcontractor is entitled to recover from Owner the sum of \$_____ plus interest accruing at _____% per month from _____, _____.

COUNT III

17. Within the proper time periods and as required by Chapter 44A of the North Carolina General Statutes, on _____, _____, Subcontractor filed a Claim of Lien against the real property upon which the work was performed.

18. Because of the personal liability of Owner to Subcontractor, Subcontractor is entitled to foreclose its lien against the real property and to recover the sums owed to Subcontractor from the proceeds of the foreclosure sale.

19. In addition, Subcontractor is entitled, by way of subrogation to the lien rights of General Contractor, to foreclose its lien against the real property and to recover the sums owed from the proceeds of the foreclosure sale.

THEREFORE, Subcontractor prays for relief as follows:

1. That Subcontractor have and recover from General Contractor the sum of \$_____, plus interest at the rate of _____% accruing from _____, _____;

2. That Subcontractor have and recover from Owner the sum of \$_____, plus interest at the rate of ___% accruing from _____, ____;

3. That the sums claimed herein be declared a lien on the real property;

4. That the real property be sold and the proceeds of such sale be paid to Subcontractor;

5. That the costs of this action be taxed against General Contractor and Owner; and

6. That the court award Subcontractor such other relief as it may deem just and proper.

This is the ___ day of _____, 2003.

Attorneys for _____