CHAPTER 7

Liens of Laborers and Others on Contract Price

**SECTION 29‑7‑10.** Contractors and subcontractors to pay laborers and others out of money received; laborers’ lien.

 Any contractor or subcontractor in the erection, alteration, or repairing of buildings in this State shall pay all laborers, subcontractors, and materialmen for their lawful services and material furnished out of the money received for the erection, alteration, or repairs of buildings upon which such laborers, subcontractors, and materialmen are employed or interested and such laborers, as well as all subcontractors and persons who shall furnish material for any such building, shall have a first lien on the money received by such contractor for the erection, alteration, or repair of such building in proportion to the amount of their respective claims. Any person providing private security guard services at the site of the building during its erection, alteration, or repair shall be deemed to be a laborer within the meaning of this section. Nothing herein contained shall make the owner of the building responsible in any way and nothing contained in this section shall be construed to prevent any contractor or subcontractor from borrowing money on any such contract. “Person” as used in this section shall mean any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other such entity.

HISTORY: 1962 Code Section 45‑301; 1952 Code Section 45‑301; 1942 Code Section 1278; 1932 Code Sections 1278, 8770; Civ. C. ‘22 Sections 173, 5682; Civ. C. ‘12 Sections 451, 4152; Civ. C. ‘02 Sections 338, 3047; 1896 (22) 198; 1897 (22) 487; 1976 Act No. 524, Section 3; 1991 Act No. 247, Section 1.

CROSS REFERENCES

Lien for expenses of State for care and treatment in State mental health facilities, see Section 44‑23‑1140.

Right of contractor or subcontractor to set off against money upon which laborer or other party has a lien, see Section 29‑7‑20.

Library References

Mechanics’ Liens 94, 113(1).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 105 to 106, 116 to 117.

RESEARCH REFERENCES

Encyclopedias

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

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 8:40, Criminal Penalties for Nonpayment.

Bruner and O’Connor on Construction Law Section 8:41, Trust Fund Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Commercial law. 43 S.C. L. Rev. 31 (Autumn 1991).

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

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1. In general

Quoted in U. S. for Use of Brown Bros. Grading Co. v. F. D. Rich Co. (D.C.S.C. 1968) 285 F.Supp. 572.

Laborers who worked on construction project, and who were employed by subcontractor’s wholly owned subsidiary, could assert a first lien against money received by subcontractor through settlement in its favor in breach‑of‑contract dispute with general contractor, though laborers were not employed by subcontractor; laborers were “employed” and “interested” in the work as laborers providing lawful services. C.R. Meyer and Sons Co. v. Custom Mechanical CSRA, LLC (S.C.App. 2015) 412 S.C. 575, 773 S.E.2d 361. Mechanics’ Liens 107

Statute governing payment of laborers out of, and providing them first lien on, money received by contractors and subcontractors does not require the laborers to be directly employed by the contractor who receives the money in order to be entitled to a first lien; statute establishes a first lien in favor of laborers who worked on the erection of buildings, regardless of their specific employer. C.R. Meyer and Sons Co. v. Custom Mechanical CSRA, LLC (S.C.App. 2015) 412 S.C. 575, 773 S.E.2d 361. Mechanics’ Liens 107; Mechanics’ Liens 115(5); Mechanics’ Liens 198

Laborers who performed work for subcontractor on construction project were not prohibited from establishing first lien on funds awarded to subcontractor via settlement with general contractor, even though subcontractor did not receive the disputed funds directly, but rather the funds were held in trust account of subcontractor’s attorneys pending determination of priorities of subcontractor’s creditors; disputed funds were owned by subcontractor and held for its benefit, and statute governing laborers’ first lien on funds received by contractors or subcontractors did not turn on how the funds were received, whether physically or in the account of an escrow agent. C.R. Meyer and Sons Co. v. Custom Mechanical CSRA, LLC (S.C.App. 2015) 412 S.C. 575, 773 S.E.2d 361. Mechanics’ Liens 115(5); Mechanics’ Liens 198

Each laborer on construction project, who was employed by subcontractor’s subsidiary and who elected to have a percentage of their wages withheld by subsidiary and set aside in union’s vacation fund and paid to laborers twice per year, had a direct contractual right to receive the vacation funds, and therefore laborers had independent claims to the unpaid vacation funds in their action against subcontractor for a first lien against settlement proceeds subcontractor received in breach‑of‑contract dispute with general contractor, even though union had also brought a separate claim for the vacation funds that had already been litigated and resolved. C.R. Meyer and Sons Co. v. Custom Mechanical CSRA, LLC (S.C.App. 2015) 412 S.C. 575, 773 S.E.2d 361. Mechanics’ Liens 107

This section and the sections following are concerned with the rights of subcontractors, laborers and materialmen not against the building or its owner or in the balance of the contract price in the hands of the owner, but in the money that has been paid by the property owner to the prime contractor. Lowndes Hill Realty Co. v. Greenville Concrete Co. (S.C. 1956) 229 S.C. 619, 93 S.E.2d 855.

Applied in Guimarin v. Southern Life & Trust Co. (S.C. 1915) 100 S.C. 12, 84 S.E. 298.

Lien does not attach until the contractor has received the money. Morgan & Austin v. D.W. Alderman & Sons’ Co. (S.C. 1905) 70 S.C. 462, 50 S.E. 26.

2. Priorities

A statutory lien granted by Section 29‑7‑10, which requires building contractors to pay subcontractors out of the money received for the work the subcontractors are employed to perform, was a “first lien” according to the statute and, therefore, the statutory lien had priority over a perfected security interest in the general contractor’s accounts receivable. The imposition of criminal penalties under Section 29‑7‑20 was not the exclusive remedy against the contractor; if the statute were so construed, it would render meaningless the lien granted to subcontractors by Section 29‑7‑10. Additionally, Chapter 9 of the Uniform Commercial Code was not relevant to the statutory lien. Poinsett Const. Co., Inc. v. Fischer (S.C.App. 1990) 301 S.C. 343, 391 S.E.2d 875. Secured Transactions 144

3. Proportionate shares

A provider of building supplies was not entitled to an award of the money paid to a contractor, by the homeowners for whose homes the supplies were provided, where (1) the subcontractor who ordered the supplies from the provider abandoned the job leaving various suppliers unpaid in a total amount of $144,731.70, (2) the provider claimed a debt of $79,390.11, and (3) the judgement awarded was $79,390.11, but the appealed order made no finding of the provider’s proportionate share of the funds held by the contractor, and a casual review of the record reflected that the judgement awarded exceeded the total of the proportionate amount owed to this provider. Stovall Bldg. Supplies, Inc. v. Mottet (S.C.App. 1990) 305 S.C. 28, 406 S.E.2d 176, certiorari denied.

**SECTION 29‑7‑20.** Failure to pay laborers and others; falsely certifying that payment has been made; penalties; waiver of right to file or claim lien for labor and material; set off against money owed.

 (1) A contractor or subcontractor who, for other purposes than paying the money loaned upon such contract, transfers, invests or expends and fails to pay to a laborer, subcontractor, or materialman out of the money received as provided in Section 29‑7‑10 is guilty of a misdemeanor and, upon conviction, when the consideration for the work and material exceeds the value of one hundred dollars must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not less than three months nor more than six months and when such consideration does not exceed the value of one hundred dollars must be fined not more than five hundred dollars or imprisoned not longer than thirty days.

 (2) Any person who wilfully and intentionally certifies to any owner or lending institution by affidavit or otherwise that all persons, firms, or corporations including subcontractors and materialmen having furnished services, labor, or materials or extra items used in the construction, improvement, or repair to the owner’s building or real property have been paid in full, when such persons have not been paid in full, except with regard to services or materials concerning which all lien rights have been waived in writing, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than five thousand dollars or imprisoned not more than sixty days, or both. Provided, however, that an agreement to waive the right to file or claim a lien for labor and materials is against public policy and is unenforceable unless payment substantially equal to the amount waived is actually made.

 (3) Unless otherwise provided in an agreement between the parties, a contractor or subcontractor may set off, against the money upon which a laborer, subcontractor, or materialman has a lien as provided by Section 29‑7‑10, any debt claimed to be owed to the contractor by such laborer, subcontractor, or materialman, based upon a good faith claim that those services and materials for which payment is claimed by the laborer, subcontractor, or materialman were defective. In order to make such a set‑off, a declaration and accounting thereof must be included in any certificate submitted with an application for payment and a copy thereof or a separate notarized original of the declaration must be sent by certified mail to the affected laborer, subcontractor, or materialman at the time the certificate is submitted.

HISTORY: 1962 Code Section 45‑302; 1952 Code Section 45‑302; 1942 Code Section 1278; 1932 Code Sections 1278, 8770; Civ. C. ‘22 Sections 173, 5682; Civ. C. ‘12 Sections 451, 4152; Civ. C. ‘02 Sections 338, 3047; 1896 (22) 198; 1897 (22) 487; 1976 Act No. 545, Section 1; 1991 Act No. 247, Section 2.

Library References

Mechanics’ Liens 94, 113(1).

Westlaw Topic No. 257.

C.J.S. Mechanics’ Liens Sections 105 to 106, 116 to 117.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 8:40, Criminal Penalties for Nonpayment.

NOTES OF DECISIONS

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1. In general

Quoted in U. S. for Use of Brown Bros. Grading Co. v. F. D. Rich Co. (D.C.S.C. 1968) 285 F.Supp. 572.

Section 29‑7‑20 contemplates the case where a general contractor is paid by an owner for renovations or repairs, then withholds payment from a subcontractor, and therefore the statute did not apply to a situation where a subcontractor submitted an estimate to the general contractor, the general contractor paid the subcontractor the amount of the estimate from funds it had received from the lessee, and the general contractor did not learn of the subcontractor’s additional charges until 2 weeks after the initial payment. Adams v. B & D, Inc. (S.C. 1989) 297 S.C. 416, 377 S.E.2d 315.

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

Money received under a contract secured by bond and paid to materialmen for supplies furnished for other jobs should be credited on the bond. Southern States Supply Co. v. Union Indemnity Co. (S.C. 1931) 161 S.C. 219, 159 S.E. 532. Mechanics’ Liens 315

Cited in State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

It is an offense under this section not to pay laborers, etc., out of the money received on the contract. State v. Campbell (S.C. 1910) 85 S.C. 11, 66 S.E. 1059.

2. Construction

Ahe imposition of criminal penalties under Section 29‑7‑20 is not the exclusive remedy against the contractor; if the statute were so construed, it would render meaningless the lien granted to subcontractors by Section 29‑7‑10. Additionally, Chapter 9 of the Uniform Commercial Code was not relevant to the statutory lien. Poinsett Const. Co., Inc. v. Fischer (S.C.App. 1990) 301 S.C. 343, 391 S.E.2d 875.

The natural and, indeed, the only reasonable construction of this section is that it makes penal not the mere failure to pay a debt, but the disposition by the contractor of a specific sum of money held by him under a lien so as to defeat the lien. This does not violate the constitutional inhibition against imprisonment for debt except in cases of fraud. State v. Hertzog (S.C. 1912) 92 S.C. 14, 75 S.E. 374.

3. Elements of offense

In a prosecution under Section 29‑7‑20 against a building contractor for failure to pay materialmen out of construction loan funds, it was error for the trial judge to instruct the jury that if it found that the defendant had commingled the funds and thereby failed to pay a materialman, he would be in violation of the statute, since “commingling” is not an element of the offense set forth in Section 29‑7‑20, and the instruction could have misled the jury to believe that it should convict the defendant if he had commingled construction loan funds. State v. Rothell (S.C. 1990) 301 S.C. 168, 391 S.E.2d 228.

4. Corporations

A corporate officer and director who was solely responsible for the day‑to‑day operations of the business could not avoid criminal responsibility under Sections 29‑7‑10 and 29‑7‑20 on the basis that his actions were taken on behalf of, and in his capacity as officer and director of, the corporation. When a person causes a corporation to commit a crime, he cannot invoke the existence of the corporation to shield himself from prosecution. State v. Hill (S.C.App. 1985) 286 S.C. 283, 333 S.E.2d 789.

**SECTION 29‑7‑30.** Right of arbitration.

 Any contractor or subcontractor may have the right of arbitration by agreement with any such laborer, subcontractor or materialman.

HISTORY: 1962 Code Section 45‑303; 1952 Code Section 45‑303; 1942 Code Section 1278; 1932 Code Sections 1278, 8770; Civ. C. ‘22 Sections 173, 5682; Civ. C. ‘12 Sections 451, 4152; Civ. C. ‘02 Sections 338, 3047; 1896 (22) 198; 1897 (22) 487.

CROSS REFERENCES

Uniform Arbitration Act, see Sections 15‑48‑10 et seq.

NOTES OF DECISIONS

In general 1

1. In general

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