

1987

Graco Fishing and Rental Tools v. Ironwood Exploration, Inc. : Brief of Respondent

Utah Supreme Court

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F. Alen Fletcher; Pruitt, Gushee & Fletcher; Attorneys for Appellants.

Harry H. Souvall; Robert M. McRae; McRae & Deland; Attorneys for Respondents.

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

870170

GRACO FISHING AND RENTAL
TOOLS, INC. and I. G.
SPECIALTY MACHINE SHOP,

:

:

Plaintiffs/Respondents,

:

vs.

:

Case No. 870170

IRONWOOD EXPLORATION, INC.,
R. D. POINDEXTER, HORIZON
OIL & GAS COMPANY, WILLIAM
H. WALTON and ARDEN A.
ANDERSON,

:

Priority Schedule No. 14b

:

:

Defendants/Appellants.

:

BRIEF OF RESPONDENTS

APPEAL FROM THE JUDGMENT OF THE SEVENTH JUDICIAL DISTRICT
COURT FOR DUCHESNE COUNTY
Honorable Richard C. Davidson, District Judge

HARRY H. SOUVALL, #5919
ROBERT M. McRAE, #2217
McRAE & DeLAND
209 East 100 North
Vernal, Utah 84078
Telephone: (801) 789-1666
Attorneys for Respondents

F. ALAN FLETCHER, #1088
PRUITT, GUSHEE & FLETCHER
1850 Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 531-8446
Attorneys for Appellants

FILED

AUG 28 1987

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Telephone: (801) 789-1666
Attorneys for Respondents

F. ALAN FLETCHER, #1088
PRUITT, GUSHEE & FLETCHER
1850 Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 531-8446
Attorneys for Appellants

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BRIEF OF RESPONDENTS

STATEMENT OF FACTS

The parties have stipulated to the facts and have submitted an Agreed Statement of Record on Appeal which has been approved by the District Court. Graco accepts the Statement of Facts contained in Ironwood's Brief.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Article VIII, Section 3 of the Constitution of Utah and §78-2-2(i) of Utah Code Annotated (1953 as amended).

ISSUES ON APPEAL

1. Whether the former mechanics' lien statutes (§38-1-1 et seq. U.C.A. (1953 as amended)) entitle Graco to

recover from the lessee of an oil well location charges incurred incident to rental of equipment, sale of equipment not consumed on the project, transportation charges, or charges for repair of rented equipment.

2. Whether the attorney's fee provisions of the mechanics lien statute, §38-1-18, required Graco to differentiate between the time spent on its lien theory and the time spent on its quantum meruit and contractor bond theories, all of which are separate, cumulative theories of recovery covering the same factual claim.

3. Does the contractors bond statute, §14-2-1 U.C.A., apply to rental services performed on an oil well when the owner of the oil well fails to obtain a contractors bond and the subcontractor suffers a loss as a result of a lack of bond?

4. Is the owner of an oil well unjustly enriched when it retains \$10,035.32 of monies owed the general contractor, and fails to pay a subcontractor \$10,733.07 not paid the subcontractor by the general contractor even though the subcontractor performed its obligations under the contract?

SUMMARY OF ARGUMENT

The trial court correctly held as a matter of law that the mechanics lien statute, §38-1-3 U.C.A., applied to the equipment and material rental charges supplied by Graco on the Ironwood well. The statute as written in 1983 allows for

the imposition of rental charges, equipment sales, transportation charges which are part of the rental agreement, and repair and inspection costs to be lienable against the Ironwood oil well. Ironwood's argument that rental charges do not apply to oil and gas wells in an attempt to provide a tortured reading of the mechanics lien statute based upon the placement of semicolons within the statute itself. The trial court's ruling imposing and foreclosing the mechanics lien should be upheld in its entirety.

The attorney's fee provision of the mechanics lien statute, U.C.A. §38-1-18, do not require Graco to differentiate between its separate theories of recovery in billing its time when each of the theories of recovery are closely related factually and are cumulative remedies available to Graco under law. To require Graco to attempt to differentiate between its three affirmative theories of recovery would present enormous ethical and practical problems for the attorney billing his house to different theories of recovery on the same facts. The trial court correctly granted Graco judgment on the award of attorney's fees.

The contractors bond statute, U.C.A. §14-2-1, applies to the Ironwood oil well and the services provided by Graco. Because Ironwood failed to require Lantz to post a performance bond Graco is entitled to judgment against Ironwood for the full amount of the contract owed of \$30,499.43 or, in the

alternative, for the remaining \$10,733.07 not covered by the mechanics lien statute as it was for services on a separate well location on which no lien was filed.

Ironwood has been unjustly enriched in the amount of at least \$10,035.32 because Graco provided \$30,499.43 worth of services to Lantz on Ironwood wells and Ironwood still owes Lantz \$10,035.32 on its contract with Lantz. If Ironwood is allowed to keep this amount Ironwood will be unjustly enriched both in the amount it owes to Lantz and in the amount of services Graco provided that have yet to be compensated. Graco requests judgment against Ironwood in the amount of \$10,035.32 as unjust enrichment.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY RULED THAT GRACO IS ENTITLED TO A LIEN FOR THE SERVICES IT PROVIDED.

A restatement of the facts indicates that the trial court granted judgment on Graco's mechanics lien claim in the amount of \$19,766.36. This claim is governed by the provisions of §38-1-3 U.C.A. as it existed in 1983 and 1984.

The mechanics lien statute as it was in effect in 1983 provided:

Contractors, subcontractors and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner; all persons who shall do work or furnish materials for the prospecting, development, preservation or

working of any mining claim, mine, quarry, oil or gas well, or deposit; and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property or concerning which they have rendered service, performed labor or furnished or rented materials or equipment for the value of the service rendered, labor performed or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor or otherwise. Such liens shall attach only to such interest as the owner may have in the property, but the interest of a lessee of a mining claim, mine or deposit, whether working under bond or otherwise, shall for the purposes of this chapter include products mined and excavated while the same remain upon the premises included within the lease.

In construing the meaning of any statute, the Court should give a plain reading to the act in question, and in the case of ambiguity, should give primary effect to the intent of the Legislature. Christensen v. Industrial Commission, 692 P.2d 755 (Utah 1982). As the Court of Appeals stated in State v. Jones, 55 Utah Adv. Rep. 60:

One of the fundamental rules of statutory construction is that the statute should be looked at as a whole and in light of the general purpose it was intended to serve; and should be so interpreted and applied as to accomplish that objective. In order to give the statute the implementation which will fulfill its purpose, reason and intention sometimes prevail over technically applied literalness. State v. Jones, 55 Utah Adv. Rep. 60, 62 (Utah App. 1987) (quoting Andrus v. Allred, 17 Utah 2d 106, 109, 404 P.2d 972, 972 (1965)).

Moreover, because mechanics lien statutes are remedial in nature, the Act should be liberally construed in favor of the lien claimant. Calder Bros. v. Anderson, 652 P.2d 922, 924 (Utah 1982). With these general tenants of statutory construction in mind, the mechanics lien statute will be analyzed in relation to rental charges, equipment sales, transportation charges, and repairs as they apply.

1. Rental Charges.

Prior to 1981 the mechanics lien statute failed to provide a lien for rental charges. In 1981 the Legislature, through Ch. 170 1981 Utah Laws amended U.C.A. §38-1-3, to allow those renting materials or equipment the benefit of the mechanics lien statutes. The relevant part of §38-1-3 as amended in 1981 is one long sentence divided into sections by semicolons. The defendants have numbered the sections divided in to semicolons and are claiming that the rental provisions only apply to the first and third sections of the Act. The second section dealing with "a person who shall do work or furnish materials for prospecting, development, preservation or working on any mining claim, mine quarry or oil or gas well or deposit; . . ." according to Ironwood does not apply to rental charges because the Legislature did not specifically amend this second section to state "renting" materials. This argument leads to the absurd conclusion that this second section then is a separate sentence of the Act which stands by

itself. A reading of the above section clearly indicates that this "section" must be read in conjunction with some other part of the Act in order to be a sentence at all. A proper reading of the section is:

All persons who shall do work or furnish materials for the prospecting, development, preservation or working of any . . . oil and gas well . . . shall have a lien upon the property upon or concerning which they have rendered service, performed labor or furnished or rented materials, or equipment for the value of the service rendered, labor performed or materials or equipment furnished or rented by each respectively . . . (emphasis added)

Thus under the plain meaning of the amended Act, and the only rational reading of the Act as a whole, Graco is entitled to a lien for the rental charges on the oil and gas well subject to this action.

Assuming arguendo there is an ambiguity as to the effect of the amendment, the Court may examine the title to the act for guidance as to the intent of the Legislature. Sutherland Statutory Construction §22.29, Vol. 1A p. 263 (1985 Revision). The title of the 1981 Amendment states:

An Act Relating to Liens; Providing Protection for Persons Who Rent Equipment or Materials Under the Mechanics' Lien Statute.

The Legislature intended to amend the entire Act not just the first and third sections as alleged by Ironwood. As such the rental charges were properly foreclosed under the mechanics lien statute.

2. Equipment Sales.

As the facts indicate, the invoice also charges \$5,919.14 for equipment furnished as part of the overall rental agreement. Defendants cite Stanton v. Transportation Company v. Davis, 9 Utah 2d 184, 341 P.2d 207 (1959) for the proposition that, for material to be lienable, the material must be consumed in its use. Stanton at 341 P.2d 211.

The quote in Stanton however dealt with the claimants attempt to obtain a lien for such items as "wrenches, screwdrivers, and other tools, parts, wire brooms and supplies sold to the (driller) by (claimant) for which the former did not pay." Id. Stanton 9 Utah 2d at 190.

In the case at hand there is nothing in the record as to what happened to the drill pipe or gaskets. Ironwood states that the bits were presumably removed upon completion of the project. Because, however, this factual allegation is unsupported in the record and was not challenged at the trial court level by affidavit, the factual determination that the drill pipe and gaskets were part of the lien should not be disturbed on appeal. Even if Stanton prohibits the plaintiff from using the lien laws to recover the cost of equipment sold, the Legislature amended §38-1-3 U.C.A. in 1981 to allow a lien for "equipment furnished." The amendment protects those providing equipment under a rental agreement because the pipe and gaskets are equipment. Under the former law, these

items had to fall under the definition of materials prior to the amended Act. In 1981 the Legislature broadened the definition of what is lienable to include equipment. As such, the 1981 amendment renders some of the language in Stanton obsolete. The equipment sales are so directly intertwined to the rental agreement that they are lienable under U.C.A. §38-1-3.

3. Transportation Charges.

The Graco lien included \$2712.14 in transportation charges. The charges in question were necessary to transport the rental equipment to and from the site. Ironwood once again cites Stanton for the proposition that transportation charges are not lienable.

This argument ignores the post-Stanton plain language of the 1981 amendment that allows a lien for rental equipment charges. The transportation charges are part and parcel of the rental agreement and are a major cost of doing business in the rental market. The transportation charges on rentals are different from that on sales because the equipment rental involved in renting services also includes equipment servicing, repairs and transportation, all of which are rental charges. The Legislature broadened the definition of rental equipment liens to expressly protect subcontractors providing these services. As such, §38-1-3 U.C.A., as was in effect in 1983, applied to transportation charges when they are incurred as part of the rental services performed and Stanton is inapplicable in this context.

4. Repair charges.

Ironwood disputes the \$1096.00 charges for repairs to and inspection of the rental equipment. Again Ironwood cites Stanton to support the proposition that such charges are not proper subjects of the lien.

These charges are once again part of the overall rental services which are lienable pursuant to the 1981 amendment to the mechanics lien statute. Since Graco is obligated to keep its rental equipment in good repair, inspection and repair expenses are part of the necessary expenses lienable pursuant to the 1981 amendments absent summary judgment affidavits to the contrary. Graco's charges for inspection and repair are its responsibilities under its contract and are lienable pursuant to §38-1-3 U.C.A. as amended.

POINT II

GRACO IS ENTITLED TO ATTORNEYS' FEES BECAUSE IT PREVAILED IN ITS AFFIRMATIVE CAUSE OF ACTION AND GRACO NEED NOT DISTINGUISH BETWEEN TIME SPENT SEPARATE BUT CLOSELY INTERRELATED THEORIES OF RECOVERY.

In the trial court action Graco prevailed in its lien claimed and filed affidavits claiming attorneys' fees of \$3798.75, pursuant to U.C.A. §38-1-18, which provides:

In any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action. (Emphasis added)

This section provides for an award of attorney's fees whenever a party prevails on a lien foreclosure. See Petty Investment Co. v. Miller, 576 P.2d 883 (Utah 1978).

Ironwood claims however that Graco must distinguish between time spent on the lien foreclosure and time spent on Graco's other two theories. In support thereof, Ironwood cites Nelson v. Newman, 583 P.2d 601 (Utah 1978); Utah Farm Production Credit Association v. Cox, 627 P.2d 62 (Utah 1981); Stubbs v. Hemert, 567 P.2d 168 (Utah 1977); Imperial-Yuma Production v. Hunter, 609 P.2d 1329 (Utah 1980); and FMA Financial Corp. v. Build, Inc., 17 Utah 2d 80, 404 P.2d 670 (Utah 1975).

None of the above cases support the proposition that Graco must distinguish between attorney's fees spent on the lien foreclosure and attorney's fees spent on the contractors bond statute and quantum meruit theories. Nelson v. Newman; Utah Farm Credit Association v. Cox; Stubbs v. Hemert; and Imperial-Yuma Production v. Hunter all hold that a party must separate time spent on successfully prosecuting an action where attorney's fees are available from time spent defending a counterclaim. See Nelson v. Newman, 583 P.2d at 604; Utah Farm Credit Association v. Cox, 627 P.2d at 66; Stubbs v. Hemert, 567 P.2d at 171; and Imperial-Yuma Production v. Hunter, 609 P.2d at 1331. Moreover, FMA Financial Corp., supra, held that there must be evidence of the time spent on

the case. A flat rate without anything further does not meet the plaintiffs burden of proof. FMA Financial Corp. v. Build, Inc., 17 Utah 2d at 85-86.

In the case at hand Graco pursued the same cause of action under three different theories of relief. Graco incurred no attorney's fees defending a counterclaim and submitted a detailed affidavit regarding hours spent on the clients case.

This Court recognizes that the remedies provided under the Mechanics' Lien Act are cumulative and do not diminish in any way a claimants rights to enforce the obligation of contracts or any other remedy the claimant may have. Harris-Dudley Plbg. v. Prof. United World Travel, 592 P.2d 586, 588 (Utah 1979). Because Graco's remedies are cumulative, the cases cited by Ironwood regarding counterclaims are inapplicable to this case.

Moreover, to require Graco to differentiate between time spent on separate but closely interrelated theories for relief would lead to billing difficulties, and an unrealistic, arbitrary division of time. For example, factual investigation mostly likely would apply to all three theories for relief. If the fact investigation benefited all three theories, billing would be difficult.

In this situation, an attorney must either bill the investigative time equally in thirds to each theory thereby unnecessarily benefiting the defendant or must unrealistically

bill all time but essential legal research on alternative theories to the theory providing for an award of attorneys fees, which of course would most benefit the client. Either scenario provides an ethically difficult decision.

The more workable alternative is for the Court to award reasonable attorney's fees when a party prevails under the lien statute regardless of other theories the party pleaded. The fees cannot be claimed for defense of the counterclaim and what is a reasonable attorney's fee has always been a function of the trial court, and should remain so without imposing unrealistic restrictions on attorney billing practices.

POINT III

THE CONTRACTORS BOND STATUTE, U.C.A. §14-2-1 ET SEQ., APPLIES TO IRONWOOD'S FAILURE TO OBTAIN A CONTRACTORS BOND FROM LANTZ.

As the facts indicate, defendant Ironwood failed to require a contractors bond from Lantz. (F.5) The contractors bond statute in force during the time period relevant to this case states:

The owner of any interest in land entering into a contract, involving \$2,000 or more, for the construction, addition to, alteration, or repair of any building, structure, or improvement upon land shall, before any such work is commenced, obtain from the contractor a bond in a sum equal to the contract price, with good and sufficient sureties, conditioned for the faithful performance of the contract and prompt payment for materials furnished and labor performed under the contract. This bond runs to the owner and to all other persons as

their interest may appear. Any person who has furnished any materials or performed labor for or upon any such building, structure, or improvement, for which payment has not been made, has a direct right of action against the sureties upon such bond for the reasonable value of the rented materials or equipment furnished, for the reasonable value of the materials furnished, or for labor performed, not exceeding the prices agreed upon. This right of action accrues 40 days after the completion, abandonment, or default in the performance of the work provided for in the contract.

This bond shall be exhibited to any person interested, upon request.

The issue in this case is whether the contractors bond statute applies to the rental services provided by Graco but not paid for by either Lantz or Ironwood.

The plain language of the Act could lend support to either party on this issue. Although somewhat ambiguous, a careful reading of the Act, its legislative purposes and subsequent case law, support the argument that it applies to rental services supplied by a subcontractor on an oil well.

The Act applies to "the owner of any interest in land entering into a contract, involving \$2,000 or more, for the construction, addition to, alteration, or repair of any . . . structure, or improvement upon land . . .". Ironwood is clearly an owner of an interest in land involving a contract for improvement upon the land. Ironwood owns a leasehold interests in oil wells. (F.1) The contract involved an improvement or structure upon the land, to-wit: oil wells.

Environmental concerns aside, there can be little question that an oil well is a structure or an improvement upon the land.

Moreover, Graco constitutes a party who has "furnished any materials or performed labor for or upon such building, structure or improvement for which payment has not been made." As Exhibit D (Facts) indicates Graco provided rental equipment and transportation charges in the amount of \$10,035.32. Although the statute does not expressly provide for recovery of rental charges, it does not exclude them either. Indeed the Utah Legislature clarified its intent when it amended §14-2-1 U.C.A. to provide for "equipment and materials rented." 1985 Utah Law C. 219 §1.

Moreover, the court often refers to the mechanics lien statutes in construing the meaning of the contractors bond statute. King Bros., Inc. v. Utah Dry Kiln Company, 13 Utah 2d 339, 374 P.2d 254 (1962). As the court stated in King Bros.:

The mechanics lien statutes were designed to prevent the land owner from taking the benefit of improvements placed on his property without paying for the labor and materials that went into it. . . . Because of the common purpose of the lien and contractors bond statutes, and their practically identical language, adjudications as to what is lienable under the former are helpful in determining the proper application of the latter. Id. 13 Utah 2d at 341.

In this case §14-2-1 U.C.A. should be construed in light of §38-1-3 U.C.A. which provides for a lien for equipment and material rented to an oil well as discussed previously in this brief. In fact, had Ironwood obtained a contractors bond, this litigation would not have been necessary. Graco is thus entitled to judgment against Ironwood for the additional \$10,733.07 under U.C.A. §14-2-2 because Ironwood failed to obtain the bond required under U.C.A. §14-2-1. Alternatively, in the event Graco's judgment on the lien claim is reversed by this Court, Graco respectfully requests that this Court enter judgment against Ironwood for the full \$30,499.43 owed by Lantz.

POINT IV

IRONWOOD HAS BEEN UNJUSTLY ENRICHED IN THE AMOUNT OF \$10,345.41.

Graco performed \$30,499.43 worth of work on Ironwood's well. (F.3) This amount, \$10,733.07, remains owed to Graco that is not covered by the mechanics lien laws. (F.4) Ironwood has not paid Graco any amount due on Graco invoices but has paid Lantz or its creditors all but \$10,345.41 of the amount due under the contract between Ironwood and Lantz. (F.7)

The crux plaintiff Graco's argument is that Ironwood has been enriched by Graco's work in the amount of \$10,733.49 and has unjustly retained \$10,035.00 of the money owed by Lantz to Graco.

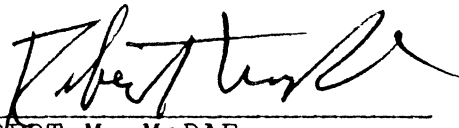
If the trial court's dismissal of Graco's claim for unjust enrichment is not reversed, Ironwood will be unjustly enriched in the amount of \$20,768.00. Graco respectfully requests judgment in the amount of \$10,035.00 so that Graco can be almost fully compensated and Ironwood will not be unjustly enriched.

CONCLUSION

It is respectfully submitted that for the reasons discussed herein the judgment of the District Court should be affirmed regarding the judgment on Graco's lien foreclosure and attorneys' fee award. The judgment of the District Court on Graco's cause of action under the contractors bond statute and for unjust enrichment should be reversed.

RESPECTFULLY SUBMITTED this 26th day of August, 1987.

McRAE & DeLAND




ROBERT M. McRAE
Attorneys for Respondent



HARRY H. SOUVALL
Attorneys for Respondent

CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, four true and correct copies of the Brief of Respondents to F. Alan Fletcher, 1850 Beneficial Life Tower, Salt Lake City, Utah 84111 on the 27th day of August, 1987.



either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the supreme court. If a justice of the supreme court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

Repeals and Reenactments. — See the Compiler's Note following the analysis at the beginning of this article. See former Article

VIII, § 2 in the bound volume for the former provisions comparable to this section.

Sec. 3. [Jurisdiction of supreme court.]

The supreme court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The supreme court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the supreme court's jurisdiction or the complete determination of any cause.

Repeals and Reenactments. — See the Compiler's Note following the analysis at the beginning of this article. See former Art. VIII,

§ 4 in the bound volume for the former provisions comparable to this section.

DECISIONS UNDER FORMER PROVISIONS

ANALYSIS

Appellate jurisdiction.
Certified questions.
Certiorari.
Habeas corpus.

Appellate jurisdiction.

Appellate jurisdiction connotes review of the action of an inferior court federal courts are not inferior courts to the Utah supreme court and supreme court's answer to certified questions in a case that originated in or is to be adjudicated in a federal court is not an exercise of appellate jurisdiction within the meaning of this section. *Holden v. N L Industries, Inc.* (Utah 1981) 629 P.2d 428.

Certified questions.

Supreme court of Utah does not have jurisdiction to answer questions of state law certified to it by the federal courts in cases that are to be adjudicated or originate in the federal courts; therefore, supreme court's certification rule was withdrawn. *Holden v. N L Industries, Inc.* (Utah 1981) 629 P.2d 428.

Certiorari.

Where, due to untimeliness, a criminal conviction was no longer subject to review by the

statutory remedy of appeal, and a habeas corpus proceeding, which was properly before the supreme court on appeal, held that defendant had been deprived of his constitutional right to an appeal, and the alleged error could not have been corrected on appeal and the defendant had taken the initiative to seek an appeal before the time for appeal had passed, supreme court exercised its discretion to issue the common law writ of certiorari to allow defendant a direct review in the supreme court of the alleged errors in his trial. *Boggess v. Morris* (Utah 1981) 635 P.2d 39.

Habeas corpus.

Matters which have been or could have been raised on appeal cannot be brought before the court by habeas corpus. Habeas corpus is a civil matter and the findings of the trial court are presumed to be proper unless there is no substantial evidence to sustain them. *Schad v. Turner* (1972) 27 U 2d 345, 496 P.2d 263; *Wilson v. Turner* (1972) 27 U 2d 368, 496 P.2d 711; *Leggroan v. Turner* (1972) 27 U 2d 403, 497 P.2d 17; *Zumbrunnen v. Turner* (1972) 27 U 2d 428, 497 P.2d 34.

Law Reviews. — Judicial Socialization: An Empirical Study, 11 J. Contemp. L. 423 (1985).

78-2-1.5

JUDICIAL CODE

Membership on state law library board, § 37-1-1.	Qualifications of justices, Utah Const., Art. VIII, Sec. 7.
Proceedings unaffected by vacancy, § 78-7-21.	Retirement, Utah Const., Art. VIII, Sec. 15; § 49-7a-1 et seq., §§ 78-7-29, 78-7-30. Salary, Utah Const., Art. VIII, Sec. 14.

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Courts §§ 67, 68.	Key Numbers. — Courts ⇐ 101, 248; Judges ⇐ 1, 7 to 12.
C.J.S. — 21 C.J.S. Courts § 465; 48A C.J.S. Judges §§ 3, 7, 8, 21 to 25, 85.	

78-2-1.5. Repealed.

Repeals. — Section 78-2-1.5 (L. 1969, ch. 225, § 2), relating to salaries of Supreme Court justices, was repealed by Laws 1971, ch. 182, § 4.

78-2-1.6. Repealed.

Repeals. — Section 78-2-1.6 (L. 1979, ch. 134, § 1; 1981, ch. 156, § 1), relating to salaries of justices, was repealed by Laws 1981, ch. 267, § 2, effective July 1, 1982.

78-2-2. Supreme Court jurisdiction [Effective until January 1, 1988].

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in cases originating in:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the Board of State Lands;
 - (iv) the Board of Oil, Gas, and Mining; and
 - (v) the state engineer;

(f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(h) appeals from the district court involving a conviction of a first degree or capital felony; and

- (i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:
 - (a) first degree and capital felony convictions;
 - (b) election and voting contests;
 - (c) reapportionment of election districts;
 - (d) retention or removal of public officers;
 - (e) general water adjudication;
 - (f) taxation and revenue; and
 - (g) those matters described in Subsections (3)(a) through (h).
- (5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

Supreme Court jurisdiction [Effective January 1, 1988].

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 - (g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
 - (h) appeals from the district court involving a conviction of a first degree or capital felony; and
 - (i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:
 - (a) first degree and capital felony convictions;

History: L. 1983, ch. 61, § 3.

14-1-16. Attorney's fees.

The prevailing party shall be awarded reasonable attorney's fees.

History: L. 1983, ch. 61, § 4.

14-1-17. Exemption of entities subject to Procurement Code.

This chapter shall apply only to those political entities not subject to the provisions of Chapter 56, Title 63.

History: L. 1983, ch. 61, § 5.

CHAPTER 2

PRIVATE CONTRACTS

Section	Section
14-2-1. Bond to protect mechanics and materialmen.	14-2-3. Action on bond to protect mechanics and materialmen — Attorney's fee.
14-2-2. Failure to require bond — Direct liability — Limitation of actions.	14-2-4. Exceptions — Mortgagees, beneficiaries, trustees.

14-2-1. Bond to protect mechanics and materialmen.

The owner of any interest in land entering into a contract, involving \$2,000 or more, for the construction, addition to, alteration, or repair of any building, structure, or improvement upon land shall, before any such work is commenced, obtain from the contractor a bond in a sum equal to the contract price, with good and sufficient sureties, conditioned for the faithful performance of the contract and prompt payment for material furnished, equipment and materials rented, and labor performed under the contract. This bond runs to the owner and to all other persons as their interest may appear. Any person who has furnished or rented any equipment or materials, or performed labor for or upon any such building, structure, or improvement, for which payment has not been made, has a direct right of action against the sureties upon such bond for the reasonable value of the rented materials or equipment furnished, for the reasonable value of the materials furnished, or for labor performed, not exceeding the prices agreed upon. This right of action accrues 40 days after the completion, abandonment, or default in the performance of the work provided for in the contract.

This bond shall be exhibited to any person interested, upon request.

History: L. 1915, ch. 91, §§ 1 to 3; C.L. 1917, §§ 3759 to 3761; R.S. 1933 & C. 1943, 17-2-1; L. 1977, ch. 56, § 3; 1985, ch. 219, § 1.

Amendment Notes. — The 1985 amendment inserted "equipment and materials rented," after "material furnished" near the end of the first sentence of the first paragraph of the section; divided the second sentence into

expressly required the contractor to pay for all labor and materials. *De Luxe Glass Co. v. Martin*, 116 Utah 144, 208 P.2d 1127 (1949), distinguished, 3 Utah 2d 150, 280 P.2d 448 (1955).

Where owners of tract of land upon which a franchised restaurant was built accepted performance bond from the contractor, the obligation of which ran only to them and not to "all other persons as their interest may appear," they were liable for payment of judgment for materials delivered, even though the contractor had been hired by the restaurant chain and owners had no privity of contract with him, since they had dealt directly with the contractor and had supervised payment of subcontractors. *Bennett v. Downard*, 533 P.2d 1348 (Utah 1975).

Terms of bond.

Where the condition of the bond is that the surety will indemnify the owner if the contractor fails to pay for material and labor, it is not such a bond contemplated by this section so as to allow a direct action by the materialman against the surety, as it does not promise that the contractor will pay for the material and labor. *Boise-Payette Lumber Co. v. Phoenix Indem. Co.*, 3 Utah 2d 150, 280 P.2d 448 (1955).

Unlicensed subcontractor.

The fact that a subcontractor is unlicensed will not bar his right to sue on a bond or directly against the owner who fails to require a bond. *Whipple v. Fuller*, 5 Utah 2d 211, 299 P.2d 837 (1956).

COLLATERAL REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d Contractors' Bonds § 1 et seq.

C.J.S. — 57 C.J.S. Mechanics' Liens § 256.

A.L.R. — Effect on compensation of archi-

tect or building contractor of express provision in private building contract limiting the cost of the building, 20 A.L.R.3d 778.

Key Numbers. — Mechanics' Liens ⇐ 313.

14-2-2. Failure to require bond — Direct liability — Limitation of actions.

Any person subject to the provisions of this chapter, who shall fail to obtain such good and sufficient bond, or to exhibit the same, as herein required, shall be personally liable to all persons who have furnished materials or performed labor under the contract for the reasonable value of such materials furnished or labor performed, not exceeding, however, in any case the prices agreed upon. Actions to recover on such liability shall be commenced within one year from the last date the last materials were furnished or the labor performed.

History: L. 1915, ch. 91, §§ 4, 5; C.L. 1917, §§ 3762, 3763; R.S. 1933 & C. 1943, 17-2-2; L. 1965, ch. 24, § 1.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Application of statute of limitations.

Construction of terms of bond.

Duty to exact bond.

Failure of builder to require bond.

Installment payments by debtor-contractor.

Mortgagee's liability for prepayment of general contractor.

Prejudgment interest.

Substantial performance.

Sufficiency of bond.

Supplier as materialman.

Unlicensed subcontractor.

applicable. *Roberts v. Hansen*, 25 U. (2d) 190, 479 P. 2d 345.

Time for filing lien.

Materialman who supplies homeowner is original contractor within meaning of statute and has eighty rather than sixty days within which to file mechanic's lien against homeowner's transferee. *Smith Brothers Lbr. Co. v. Johnson*, 19 U. (2d) 107, 426 P. 2d 811.

Collateral References.

Mechanics' Liens §86.
57 C.J.S. *Mechanics' Liens* §§ 90, 97.
53 Am. Jur. 2d 512, *Mechanics' Liens* § 1.

Who is a "contractor" within provisions of lien law which limit liens for material or labor furnished to contractor to amount earned but unpaid on contract, or give such liens by subrogation, 83 A L. R. 1152.

38-1-3. Those entitled to lien—What may be attached—Lien on ores mined.—Contractors, subcontractors and all persons performing any services or furnishing any materials used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner; all persons who shall do work or furnish materials for the prospecting, development, preservation or working of any mining claim, mine, quarry, oil or gas well, or deposit; and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor or furnished materials, for the value of the service rendered, labor performed or materials furnished by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor or otherwise. Such liens shall attach only to such interest as the owner may have in the property, but the interest of a lessee of a mining claim, mine or deposit, whether working under bond or otherwise, shall for the purposes of this chapter include products mined and excavated while the same remain upon the premises included within the lease.

History: R. S. 1898 & C. L. 1907, §§ 1372, 1381, 1382, 1397; L. 1911, ch. 27, § 12; C. L. 1917, §§ 286, 3722, 3731, 3732, 3747; R. S. 1933 & C. 1943, 52-1-3; L. 1973, ch. 73, § 1.

Compiler's Notes.

The 1973 amendment substituted "any services or * * * in any manner" near the beginning of the first sentence for "labor upon, or furnishing materials to be used in, the construction or alteration of, or addition to, or repair of, any building, structure or improvement upon land; all foundry men and boilermakers; all persons performing labor or furnishing materials for the construction, repairing or carrying on of any mill, manufactory or hoisting works."

Cross-Reference.

Bond to protect mechanics and materialmen under private contracts, 14-2-1.

Construction and application.

The purpose of the lien statutes is to

protect those who have added directly to the value of property by performing labor or furnishing materials upon it. *Stanton Transportation Co. v. Davis*, 9 U. (2d) 184, 341 P. 2d 207, explained in 23 U. (2d) 395, 464 P. 2d 387.

This statute contemplates that the material to be lienable must be consumed in its use on the property. *Stanton Transportation Co. v. Davis*, 9 U. (2d) 184, 341 P. 2d 207, explained in 23 U. (2d) 395, 464 P. 2d 387.

Where several lien claimants are unable to segregate and fix the value of materials which went into various properties, it is proper to apply an equitable apportionment rule which would charge each lot with an equal share of the totals claimed by the several materialmen; and in applying this rule it should be made to appear that there is no available means of definite proof as to just what material went into which unit of property, that there is sufficient proof that some material actually went into structures, and that the land is sufficiently identified and described in the

38-1-17. Costs—Apportionment—Costs and attorneys' fee to subcontractor.—As between the owner and the contractor the court shall apportion the costs according to the right of the case, but in all cases each subcontractor exhibiting a lien shall have his costs awarded to him, including the costs of preparing and recording the notice of claim of lien and such reasonable attorney's fee as may be incurred in preparing and recording said notice of claim of lien.

History: R. S. 1893 & C. L. 1907, § 1394; C. L. 1917, § 3744; R. S. 1933 & C. 1943, 52-1-17; L. 1961, ch. 76, § 1.

Compiler's Notes.

The 1961 amendment added provision for reasonable attorney's fees for preparation and recording of notice of claim of lien.

Interest on judgment.

In action to foreclose mechanic's lien

and to recover for services rendered under contract of employment, it is not error to allow interest on sum awarded. *Sandberg v. Victor Gold & Silver Mining Co.*, 24 U. 1, 66 P. 360.

Collateral References.

Mechanics' Liens ⇨ 310(1).
57 C.J.S. *Mechanics' Liens* § 350.
53 Am. Jur. 2d 942, *Mechanics' Liens* § 432.

38-1-18. Attorneys' fees.—In any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

History: R. S. 1898, § 1400; L. 1899, ch. 58, § 1; C. L. 1907, § 1400; C. L. 1917, § 3750; R. S. 1933 & C. 1943, 52-1-18; L. 1961, ch. 76, § 2.

Compiler's Notes.

The 1961 amendment deleted a provision fixing the minimum amount of attorneys' fees of not to exceed \$25.

Cross-Reference.

Attorneys' fee in suit for wages, 34-27-1.

Denial on excessive claim.

Where it appears on trial that contractor has substantially performed his contract but that he attempts to overcharge the owner in setting the total amount due on a cost-plus-ten-per-cent contract, the court does not abuse its discretion in refusing to award the contractor attorney fees in suit to collect upon such contract. *Shupe v. Menlove*, 18 U. (2d) 130, 417 P. 2d 246.

Reduction by trial court.

Lower court can properly reduce award of attorney's fees to party successful in foreclosing mechanic's lien by one-half of jury's award since under statute award of jury is advisory only. *Frehner v. Morton*, 18 U. (2d) 422, 424 P. 2d 446.

Successful party.

Award of attorney's fees is available to

person defending against lien since this section confers that benefit not only on one who asserts lien but upon "the successful party." *Palombi v. D & C Builders*, 22 U. (2d) 297, 452 P. 2d 325.

Validity of lien.

Where claims of materialman for mechanics' liens are valid, he is entitled to a reasonable attorney's fee under this section where penalty provided by 38-1-24 for alleged failure of materialman to release liens is sought by builder who contends that the liens are invalid. *Brimwood Homes, Inc. v. Knudsen Builders Supply Co.*, 14 U. (2d) 419, 385 P. 2d 982.

Materialman is not entitled to attorney's fee in proceedings to foreclose mechanic's lien where the original notice of lien was deficient and attempted amendment to correct deficiencies was not filed until after the time for filing had expired. *Roberts Investment Co. v. Gibbons & Reed Concrete Products Co.*, 22 U. (2d) 105, 449 P. 2d 116.

Collateral References.

Mechanics' Liens ⇨ 310(1).
57 C.J.S. *Mechanics' Liens* § 353.
53 Am. Jur. 2d 943, *Mechanics' Liens* § 433.

Amount of compensation of attorney for services as to mechanic's lien in absence of contract or statute fixing amount, 56 A. L. R. 2d 114.

When a subcontractor or any person furnishes labor or material as stated above at the instance and request of an original contractor, then such subcontractor's or person's lien rights, as set forth herein, are extended so as to make the final date for the filing of a notice of intention to hold and claim a lien 80 days after completion of the original contract of the original contractor

Approved March 24, 1981

CHAPTER 170

H B No 191

(Passed March 5 1981 In effect May 12, 1981)

MECHANIC'S LIENS - ITEMS COVERED

AN ACT RELATING TO LIENS, PROVIDING PROTECTION FOR PERSONS WHO RENT EQUIPMENT OR MATERIALS UNDER THE MECHANICS' LIEN STATUTE.

THIS ACT AMENDS SECTION 38-1-3, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 73, LAWS OF UTAH 1973

Be it enacted by the Legislature of the State of Utah

Section 1. Section amended.

Section 38-1-3, Utah Code Annotated 1953, as last amended by Chapter 73, Laws of Utah 1973, is amended to read

38-1-3. Those entitled to lien—What may be attached—Lien on ores mined.

Contractors, subcontractors and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner, all persons who shall do work or furnish materials for the prospecting, development, preservation or working of any mining claim, mine, quarry, oil or gas well, or deposit, and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor or furnished or rented materials[,] or equipment for the value of the service rendered, labor performed or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor or otherwise. Such liens shall attach only to such interest as the owner may have in the property, but the interest of a lessee of a mining claim, mine or deposit, whether working under bond or otherwise, shall for the purposes of this chapter include products mined and excavated while the same remain upon the premises included within the lease

Approved March 27, 1981