

1987

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

Utah Supreme Court

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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 and)	
Cross-Appellants,)	
)	
vs.)	
)	
IRONWOOD EXPLORATION, INC.,)	No. 870170
R. D. POINDEXTER, HORIZON)	
OIL & GAS COMPANY, WILLIAM)	Priority Schedule No. 14b
H. WALTON and ARDEN A.)	
ANDERSON,)	
)	
Defendants,)	
Appellants and)	
Cross-Respondents.)	
)	

APPELLANTS' REPLY BRIEF

Appeal from the Judgment of the Seventh Judicial District
Court for Duchesne County
Honorable Richard C. Davidson, District Judge

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Clerk, Supreme Court, Utah

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STATEMENT OF THE ISSUES

On this appeal, Defendant/Appellant Ironwood Exploration, Inc. ("Ironwood" herein) has raised the following issues:

1. Do the mechanics' lien statutes (§ 38-1-1, et seq., Utah Code Annotated (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? The court below improperly held that they do.

2. Do the attorney's fees provisions of the mechanics' lien statutes (§ 38-1-18, Utah Code Annotated (1953, as amended)) entitle Graco to an award of all attorney's fees incurred where it prevailed on only a portion of its claims and/or the fees were incurred in prosecution of matters other than lien foreclosure? Again, the court below improperly held that they do.

On cross-appeal, Plaintiff/Respondent Graco Fishing and Rental Tools, Inc. ("Graco" herein) has raised the following additional issues:

3. Does the contractors' bond statute, § 14-2-1, Utah Code Annotated, apply to rental services performed on an oil well? The court below properly held that it does not.

4. Is Graco entitled to recover from Ironwood on a theory of unjust enrichment or quantum meruit when it had an express

contract with a third party to provide the rental equipment? The court below correctly held that it is not.

SUMMARY OF THE ARGUMENT

Graco is not entitled to a mechanics' lien on Ironwood's oil well because the statute, as it existed at the time Graco rented its equipment to Ironwood's drilling contractor, did not contemplate such a lien for unpaid rentals. Graco similarly is not entitled to a lien for equipment sold because that equipment did not become a part of the premises, nor was it consumed in the process of developing the well. Also, Graco's claim of lien for transportation charges made in connection with the equipment rentals and for expenses incurred to repair the rental equipment must fail because such charges are beyond the contemplation of the mechanics' lien laws.

The lower court erred in awarding attorney fees to Graco because it did not carry its burden of proving the fees claimed were incurred in the successful prosecution of its mechanics' lien claims, and not in the unsuccessful prosecution of its subcontractors' bond and unjust enrichment or implied contract claims. Graco is only entitled to an award of attorney fees on those claims on which it prevailed.

On cross-appeal, Graco asserts that the lower court erred in refusing to award it judgment on its contractors' bond claim. The court ruled correctly, however, because at the time Graco entered into its rental contract, the statute did not contemplate that such a bond would be required for equipment rentals.

Finally, Graco also contends on its cross-appeal that it should have recovered on its unjust enrichment or implied contract claims. However, it had an express contract with a third party and a cause of action for implied contract will never lie where there is an express contract.

ARGUMENT

I. GRACO IS NOT ENTITLED TO A LIEN FOR THE SERVICES IT PROVIDED

At the outset of its argument, Graco recites several general tenets of statutory construction, i.e., that statutes should be given a plain reading, ambiguities should be resolved to give primary effect to the intent of the Legislature, and the statute should be read as a whole and in light of the general purpose it was intended to serve and should be applied to accomplish that purpose. Brief of Respondents, pp. 5-6. Ironwood has no particular quarrel with those basic rules because their application to the mechanics' lien statute in question compels a finding that the statute does not apply to the services Graco

rendered. We again consider each category of service independently:

1. Rental Charges. As discussed at length in its Appellants' Brief, it is Ironwood's position that the rental charges asserted by Graco are not lienable items and, therefore, will not support the lower court's judgment herein. Appellants' Brief, pp. 6-9. The basis of that contention is that the 1981 Utah Legislature amended the mechanics' lien statute to include a lien for rentals, but only to the extent the rental was made in conjunction with the construction or improvement of a building; the amendment did not apply to rentals in connection with the development of oil and gas wells. To demonstrate that fact, Ironwood quoted the statute, utilizing bracketed numbers to identify its four separate and distinct provisions:

[1] 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; [2] 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; [3] 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, [4] 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,

Appellants' Brief, p. 7; Section 38-1-3, Utah Code Annotated (as amended, 1981) (brackets and emphasis supplied). It is clear that only the provisions following bracketed numbers 1 and 4 were amended.

Graco, on the other hand, asserts that the statute, so far as it applies to rentals in connection with development of oil wells, should be read as an independent section as follows:

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 rendered materials, or equipment for the value of the service rendered, labor performed or materials or equipment furnished or rented by each respectfully

Brief of Respondents, p. 7. That suggestion, however, does not stand up to the very tenets of statutory construction posed by Graco. If Graco's suggestion were similarly applied to the first portion of the statute, it would read as follows:

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 . . . 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 respectively¹

(Emphasis added.) It will be observed that in rewriting the first portion of the statute in the manner suggested by Graco for the second, a duplication of the equipment rental provisions becomes apparent. Thus, in order to accept Graco's proposition, it must be concluded that the Legislature deemed it important to insert the words "or renting" and "or equipment" in the third line of the first portion of the statute, whereas it did not deem it necessary to do so at the similar location in the second portion of the statute. We presume that the Legislature intended the words "or renting" and "or equipment" to mean something in the first portion and the conspicuous absence thereof in the second portion suggests the Legislature intended something entirely different with respect to the second portion, i.e., that the cost of equipment rental is not a lienable item with respect to the development of oil and gas wells.

This conclusion is well supported by a subsequent amendment of the mechanics' lien statutes. In 1987, the Utah Legislature again amended Section 38-1-3 to delete all of the second portion

¹The third portion of the statute, pertaining to licensed architects, engineers, etc. could be similarly rewritten.

thereof as set forth between [2] and [3] in our example, i.e., to remove all reference to mining claims, oil or gas wells, etc. As amended, Section 38-1-3 now contains only the first portion (following [1]) and the third and fourth portions (following [3] and [4]).

The Legislature then completely rewrote the lien provisions as they relate to oil, gas and mining in a new Chapter 10. Sections 38-10-101, et seq., Utah Code Annotated (1953, as amended 1987); Addendum No. 1. The mining and oil and gas provisions formerly found in Section 38-1-3, as substantially modified and expanded, are now found in Section 38-10-102. A detailed reading of that amended statute discloses that references to equipment rentals as being lienable items are again conspicuously absent. The Legislature obviously gave a great deal of thought to the substantial 1987 amendments and it must be concluded that it did not intend that equipment rentals would support a lien, which is the same intent the Legislature had when it amended the statute in 1981 and refused to provide that rental of equipment would support a lien in connection with oil well development.

2. Equipment Sales. In its opening Appellants' Brief, Ironwood contended that the \$5,919.14 charged for the sale of drill pipe and gaskets will not support the alleged lien.

Appellants' Brief, pp. 9-10. In response, Graco argues that the suggestion that the drill pipe and gaskets were removed upon completion of the project and, therefore, are not part of the improvements, is unsupported in the record. Brief of Respondents, p. 8. Conversely, the record also does not show that the pipe and gaskets were in fact "consumed" or became a part of the well in the drilling process as required by the Stanton court so as to support the imposition of a lien. Stanton Transportation Company v. Davis, 341 P.2d 207, 211, 9 Utah 2d 184 (1959). Graco has lost track of who has the burden of proof. Graco has asserted that the equipment it has furnished will support a lien. Therefore, it has the burden of proof on that point. Id. There being no evidence that the drill pipe and gaskets were consumed in the drilling process, as Graco points out, it has failed to carry its burden.

Graco also asserts that the drill pipe and gaskets are "equipment furnished" under a rental agreement and, therefore, are covered by the amended mechanics' lien statute. Brief of Respondents, pp. 8-9. That is the same argument it makes with respect to rental equipment and Ironwood's response thereto will not be repeated here. The court is referred to the "rental charges" portion of this Brief, supra, pp. 4-7.

3. Transportation Charges. Ironwood contends that charges for the transportation of rental equipment also do not support a lien, both because they are not specifically provided for in the mechanics' lien statute and because the Stanton court expressly disallowed liens for transportation charges. Appellants' Brief, pp. 10-11. Graco disagrees on both counts. Brief of Respondents, pp. 9-10.

The argument with respect to the applicability of the lien statute to rental contracts has been previously made and will not be restated here. As to its argument that transportation charges are covered, Graco misapprehends the effect of post-Stanton amendments to the mechanics' lien statute. A fundamental tenet of statutory construction which Graco overlooks is that the Legislature will be presumed to have adopted the judicial interpretation of statutes if it subsequently amends the statute without change to the judicially interpreted language. The principle was specifically stated in Christensen v. Industrial Commission, 642 P.2d 755, 766 (Utah, 1982), which was cited by Graco:

A well-established canon of statutory construction provides that where a legislature amends a portion of a statute but leaves other portions unamended, or re-enacts them without change, the legislature is presumed to have been satisfied with prior judicial constructions of the unchanged portions of the statute and to have adopted them as consistent with its own intent.

Id., 756 (citations omitted). Thus, looking at Stanton, we find this Court specifically holding: "[T]hat the item . . . for the transportation of plaintiffs' drilling rig does not come within the intent and purpose of the statute and was not a valid lien against the defendant's property." 341 P.2d 211.

Since this Court made that interpretation of the statute in 1959, it has been amended not once, but twice. In 1981, as previously discussed, it was amended to add the provisions relating to the rental of equipment in connection with the construction of buildings but no change was made to allow transportation charges as lienable items. Therefore, the Legislature is presumed under the rule enunciated in Christensen, supra, to have accepted this Court's exclusion thereof as being consistent with the legislative intent. Thereafter, the 1987 Legislature again amended the statute to delete references to oil and gas wells and mining from the original statute and enact a new statute covering those items as Section 38-10-101, et seq. This time, however, the Legislature specifically provided that the lien for oil and gas development work "shall be for the value of the work performed or materials or equipment furnished for: . . . (e) transportation and related mileage charges, for any work performed or materials or equipment furnished" Section 38-10-102(2)(e), Utah Code Annotated (1953, as amended

1987); Addendum No. 1. Thus, in 1987 the Legislature acknowledged that there was no lien for transportation charges under former Section 38-1-3 and it then provided for such transportation charges in its 1987 amendment. However, the 1987 statute is not applicable here since the work done by Graco was performed in 1983 and 1984, prior to the 1987 amendment and, therefore, the statute as it previously existed must be applied.

4. Repair Charges. Graco contends that the \$1,096.00 it charged for repair and inspection of its rental equipment is likewise covered by the mechanics' lien statute for the reasons previously discussed. Brief of Respondents, p. 10. Ironwood respectfully disagrees for the reasons stated in its opening Appellants' Brief (p. 11) and in its prior argument herein (supra, pp. 4-7). Ironwood will not restate those arguments here, other than to reiterate that since the statute does not apply to the rental of equipment used in developing oil wells, the repair and inspection of that equipment likewise cannot be covered.

II. GRACO IS NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES ON ISSUES ON WHICH IT DID NOT PREVAIL

Ironwood contended in its opening Appellants' Brief that Graco is not entitled to the \$3,798.75 attorney fee awarded by the District Court because it failed to distinguish in its proof

of fees as to those which were incurred in the successful prosecution of its mechanics' lien claim and those which were incurred in the unsuccessful prosecution of its contractors' bond and unjust enrichment or implied contract claims. Appellants' Brief, pp. 11-15. Graco disputes that contention, attempts to distinguish the cases supporting Ironwood's position, and asserts without citation of any authority whatsoever that the prevailing party under the lien statute should be awarded all of its reasonable attorney's fees regardless of other theories it may have pled. Respondents' Brief, p. 13.

Graco attempts to distinguish the cases cited by Ironwood in its opening Appellants' Brief on the ground that they involved situations in which a portion of the attorney's fees were incurred in the successful prosecution of a claim for which attorney's fees were allowable and the balance of the fees were incurred in the defense of counterclaims for which attorney fees would not be allowed. Although that observation is correct, Graco misses the message that this Court conveyed in deciding those cases. In Nelson v. Newman, 583 P.2d 601 (Utah, 1978), the Court said: "[L]iability for payment of attorney's fees extends only to the amount necessary for the enforcement of the contract." Id., p. 604. In the context of the instant action, that rule requires that the award of attorney's fees be limited

to the amount necessary for the enforcement of the lien. The rule does not allow the award of attorney's fees under the lien statute for prosecution of other theories, i.e., unjust enrichment and contractors' bond claims. And in Utah Farm Production Credit Association v. Cox, 627 P.2d 62 (Utah, 1981), it was said: "A party is . . . entitled only to those fees resulting from its principle cause of action for which there is a contractual (or statutory) obligation for attorney's fees." Here, the only statutory obligation is with respect to the lien statute and there is no contractual obligation for attorney's fees in Graco's other theories of recovery.

Graco asserts that it is entitled to an award of all of its attorney's fees under the mechanics' lien statute, even though some of those fees were incurred in the unsuccessful prosecution of its contractors' bond claims (for which fees would be awardable to Graco only if it prevailed) and for the unsuccessful prosecution of its unjust enrichment or implied contract claims (for which no fees would be awardable regardless of Graco's success). If this approach were adopted, it would be tantamount to saying that an attorney's fee provision from one statute or contract can be applied in awarding fees under another. For instance, if Graco had prevailed on its unjust enrichment claim but lost on its mechanics' lien claim, could the Court award

attorney's fees to Graco under the attorney fee provisions of the mechanics' lien statute simply because it alleged a mechanics' lien claim? No. Clearly, Graco would not be entitled to its fees if it did not prevail under the mechanics' lien statute. That being the case, why then should it recover fees for the prosecution of similarly unrelated claims on which it did not prevail and for which it would not be entitled to attorney's fees?

Graco suggests that the requirement that counsel segregate the fees as to the various theories being prosecuted would be unworkable. This Court has already required counsel to keep track of the time expended in prosecution of a complaint as opposed to time expended in defense of a counterclaim. That is workable. It would work just as well in keeping track of different theories. In filing an attorney fee claim, counsel need only to sit down and in good faith ask himself or herself whether the work done during any particular time segment related in any way to work for which attorney's fees are awardable. If so, the fees would be claimed; if not, they would not.

III. UTAH'S CONTRACTORS' BOND STATUTE DOES NOT APPLY TO EQUIPMENT RENTALS

By way of cross-appeal, Graco contends that the District Court erred in denying its contractors' bond claims. In support

of its contention, Graco simply asserts that this Court should rewrite the contractors' bond statute to add a provision requiring such a bond if the contract includes rental expenses for equipment. We agree that the Court has on occasion referred to the mechanics' lien statute to construe the contractors' bond statute as asserted by Graco. Respondents' Brief, p. 15. The Court is limited in such referral, however, to its effort to determine the legislative intent -- it cannot write into the contractors' bond statute something that the Legislature has omitted, i.e., rental provisions.

The contractors' bond statute reads in pertinent part as follows:²

The owner of any interest in land entering into a contract . . . for the construction, addition to, or alteration or repair of, any building, structure or improvement upon land shall . . . obtain from the contractor a bond in a sum equal to the contract price . . . conditioned for the faithful performance of the contract and prompt payment for material furnished and labor performed under the contract. . . . [A]ny person who has furnished materials or performed labor for or upon any such building, structure or improvement, payment for which has not been made, shall have a direct right of action against the sureties upon such bond for the

²At pages 13 and 14 of its Brief of Respondents, Graco has quoted the contractors' bond statute in full. However, the quotation is of the statute as it was amended in 1985, not as it existed in December, 1983 and January, 1984, the pertinent period for our purposes. As will be seen, this is a very important oversight.

reasonable value of the materials furnished
or labor performed

Section 14-2-1, Utah Code Annotated (1953, as amended 1977);
Addendum No. 2. This statute differs in at least two material
respects from the mechanics' lien statute as it existed at the
time Graco performed its rental contract. First, this statute
had not been amended to include the rental of equipment as
occurred with the mechanics' lien statute of 1981. Second, there
was no reference whatsoever to the development of oil wells as is
provided in the mechanics' lien statute. Thus, referral to the
mechanics' lien statute as an aid to interpretation of the
contractors' bond statute is of no avail. Because there is no
mention of either the fact that the bond statute is intended to
apply to rentals or to oil and gas development, we must conclude
that it does not so apply.

That conclusion is confirmed by the subsequent act of the
Legislature in 1985. As indicated previously in footnote 2, the
Legislature amended the statute in 1985 in several particulars,
including the addition of the words "equipment and materials
rented" near the end of the current first sentence, the words "or
rented any equipment or" near the first portion of what is now
the third sentence, and the words "for the reasonable value of
the rented materials or equipment furnished" near the end of what

is now the third sentence³. See § 14-2-1, Utah Code Annotated (as amended, 1985); Addendum No. 3. The Legislature has thus demonstrated that in its collective judgment the statute (as it provided at the time Graco rented the equipment to Lantz) did not contemplate that rentals would require a bond. Since it did not so provide, the District Court properly dismissed Graco's claim for judgment thereon.

IV. THE DISTRICT COURT PROPERLY DENIED GRACO ITS RECOVERY ON THE THEORY OF UNJUST ENRICHMENT

Also in its cross-appeal, Graco has asserted that Ironwood has been unjustly enriched in the amount of \$10,035.00, the amount it did not pay its general contractor, Lantz Drilling & Exploration Company, Inc., under the contract between them; to remedy that alleged inequity, Graco asks this Court to imply a contract between Graco and Ironwood.⁴ Respondents' Brief, pp. 16-17. Graco's unjust enrichment theory is, however, barred

³The statute was further amended in 1987 but, since the pertinent period for purposes of this action is December, 1983 and January, 1984, that amendment is of no import.

⁴Graco argues that Ironwood must pay someone the amount that it did not pay Lantz. However, should this Court disagree with Ironwood's contentions on this appeal (i.e., that judgment was improperly entered against it on the mechanics' lien claims), then Ironwood will have paid, or be liable for payment of, more than the amount it retained from its contract with Lantz and, therefore, it could not be unjustly enriched in that amount.

as a matter of law and, therefore, the District Court's denial thereof must be sustained.

In Commercial Fixtures and Furnishings, Inc. v. Adams, 564 P.2d 773 (Utah, 1977), the defendant Adams was the owner of a building which he leased to Great Outdoors Inc. which, in turn, contracted with the plaintiff for the purchase of materials used in modifying the building. When Great Outdoors Inc. did not pay for the goods, the plaintiff filed suit against Adams, alleging an implied contract between it and Adams on the claim that he had been unjustly enriched. This Court refused to allow the unjust enrichment claim for a number of reasons, one of which was that there can be no implied agreement where there exists an express agreement:

It is also noted that there was an express contract between plaintiff and the lessee for the furnishing of materials, and when an express agreement exists one may not be implied.

Id., 564 P.2d 774 (citations omitted). The same situation exists here. Graco had an express contract with Lantz Drilling & Exploration Company, Inc. for the rental of the equipment for which Graco now seeks judgment from Ironwood. Agreed Statement of the Record on Appeal, Par. 3. The existence of that express rental subcontract bars Graco's unjust enrichment claim against Ironwood as a matter of law.

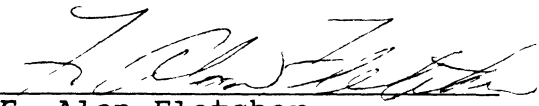
CONCLUSION

For the reasons set forth in Point I above, this Court should reverse the lower court and enter judgment in favor of Ironwood and against Graco, no cause of action, on Graco's mechanics' lien claims. The lower court's award of attorney fees to Graco should also be reversed in view of Graco's failure to establish that the fees it claims were incurred in prosecution of claims on which it prevailed.

With respect to Graco's cross-appeal, the lower court's denial of recovery on both Graco's contractors' bond claim and its unjust enrichment claim should be affirmed.

DATED this 23rd day of September, 1987.

PRUITT, GUSHEE & FLETCHER

By: 
F. Alan Fletcher
Attorneys for Appellants

MAILING CERTIFICATE

I hereby certify that on the 23rd day of September, 1987,
I mailed four (4) true and correct copies of the foregoing
APPELLANTS' REPLY BRIEF, postage prepaid, to:

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Attorneys for Plaintiffs/Respondents

A handwritten signature in dark ink, appearing to read "Robert M. McRae", is written over a horizontal line.

ADDENDUM

<u>ITEM:</u>	<u>ATTACHMENT NO:</u>
Section 38-10-102, Utah Code Annotated (as amended in 1987)	1
Section 14-2-1, Utah Code Annotated (as amended prior to 1985)	2
Section 14-2-1, Utah Code Annotated (as amended in 1985)	3

ADDENDUM "1"

38-10-102. Those entitled to lien — What may be attached — Qualifying work, materials, equipment, and costs — Liability of nonoperating owners.

(1) Contractors, subcontractors, and all persons performing work upon, or furnishing materials or equipment for any production unit, under contract with the owner, or the owner's agent or contractor shall have a lien upon the interest of the owner in:

(a) the production unit and access rights appurtenant thereto;

(b) pipelines, including rights of way, buildings, wells, oil tanks, and appurtenances located on the land or leasehold within the production unit; and

(c) the ore, minerals, oil, gas, or associated substances in the ground, or while the same remain in storage on the production unit, which are attributable to the interest subject to the lien as the interest existed on the date work was first performed or materials or equipment were first furnished.

(2) The lien upon the interest of the owner in property described in Subsections (1)(a) through (c) shall be for the value of the work performed or materials or equipment furnished for:

(a) open pit work, field processing, construction, alteration, digging, drilling, driving, boring, operating, perforating, fracturing, testing, logging, acidizing, cementing, completion, repair, maintenance, prospecting, sampling, exploration, development, preservation, performing geophysical, geochemical, location, or assessment work, or related activities;

(b) work performed or materials or equipment furnished in accordance with a pooling order, or pursuant to an operating agreement, or other agreement governing joint mining, or oil, and gas operations;

(c) title services, designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys, permitting, or regulatory compliance;

(d) foreclosure costs including publication, costs of sale, sheriff's fees, attorney's fees, and other costs of collection; and

(e) transportation and related mileage charges, for any work performed or materials or equipment furnished pursuant to Subsections (2)(a) through (d).

(3) For purposes of this section, the operator under a joint operating agreement, unit operating agreement, or other agreement granting one owner control of operations on the production unit shall not be considered to be the agent or contractor of the nonconsenting, nonoperating owners. The operator shall, however, have the lien granted under Subsection (1) upon the interest of all nonoperating owners for work performed, or materials or equipment furnished by the operator; and the nonoperating owners shall have the lien granted under Subsection (1) upon the interest of the operator for work performed, or materials or equipment furnished by third persons to the extent the nonoperating owners have paid or advanced funds to the operator for such work, materials, or equipment.

History: C. 1953, 38-10-102, enacted by L. 1987, ch. 170, § 6.

ADDENDUM "2"

14-2-1. Bond to protect mechanics and materialmen.—The owner of any interest in land entering into a contract, involving \$500 or more, for the construction, addition to, or 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 and labor performed under the contract. Such bond shall run to the owner and to all other persons as their interest may appear; and any person who has furnished materials or performed labor for or upon any such building, structure or improvement, payment for which has not been made, shall have a direct right of action against the sureties upon such bond for the reasonable value of the materials furnished or labor performed, not exceeding, however, in any case the prices agreed upon; which right of action shall accrue forty days after the completion, or abandonment, or default in the performance, of the work provided for in the contract.

The bond herein provided for shall be exhibited to any person interested, upon request.

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

NOTE: A printed version of the statute as amended in 1977 is not available. The language in 1977 (and until 1985) was identical to the above except that the triggering contract amount was changed from \$500 to \$2,000 in 1977.

ADDENDUM "3"

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.