

1987

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

Utah Supreme Court

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DOCKET NO. 870170
IN THE SUPREME COURT OF THE STATE OF UTAH

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

Plaintiffs and
Respondents,

vs.

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

Defendants and
Appellants.

No. 870170

APPELLANTS' BRIEF

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

Priority Schedule No. 14b

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STATEMENT OF THE KIND OF CASE

Plaintiffs/Respondents Graco Fishing and Rental Tools, Inc. and I. G. Specialty Machine Shop (collectively referred to as "Graco" herein) seek payment through lien foreclosure from Defendants/Appellants Ironwood Exploration, Inc., R. D. Poindexter, Horizon Oil & Gas Company, William H. Walton and Arden A. Anderson (collectively referred to as "Ironwood" herein), the lessees of an oil well location, for the value of equipment it rented, sold and furnished to Ironwood's oil well drilling contractor in connection with the drilling of an oil well at said location. Although there was no contract between Graco and Ironwood, Graco seeks imposition and foreclosure of a lien on Ironwood's leasehold property interest in the location as to a portion of its claim, and a judgment against Ironwood on the theory of quantum meruit and/or under the contractor's bond statutes as to the balance.

DISPOSITION IN THE LOWER COURT

The lower court imposed a lien on Ironwood's interest as to a portion of Graco's claims and ordered foreclosure thereof; Ironwood appeals from that judgment. The lower court also awarded Graco attorney fees and Ironwood appeals from that award. The lower court denied a portion of Graco's claims based upon its theories of quantum meruit and/or violation of the contractor's bond statute; Graco cross-appeals from denial of those claims.

RELIEF SOUGHT ON APPEAL

Ironwood seeks reversal of all or a portion of the judgment rendered against it, a reversal of all or a portion of the

attorney fee award against it, and entry of judgment in its favor as a matter of law. Ironwood further seeks affirmance of the lower court's denial of the remainder of Graco's claims.

STATEMENT OF ISSUES

Ironwood raises the following issues on this appeal:

1. Whether 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.

2. Whether 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.

Graco, on cross-appeal, raises the issues of whether the contractor's bond statutes (§ 14-2-1, et seq., Utah Code Annotated (1953, as amended)) apply to rental services provided to a third party and/or whether the doctrine of unjust enrichment applies to such rental services.

STATEMENT OF FACTS

In lieu of a record on appeal, 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.¹

Ironwood was the owner of an oil and gas lease covering the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 5 South, Range 4 West, Uintah Special Base and Meridian, in Duchesne County, Utah (the "Leasehold" herein) and other lands.² (R.1) On November 23, 1983, Ironwood entered into a Drilling Bid Proposal and Footage Drilling Contract (Ex."A") with Lantz Drilling and Exploration Company, Inc. ("Lantz" herein) for the drilling of various oil and gas wells, including a well on the Leasehold known as the Ute Tribal No. 12-5 Well or the Gulf Foy 12-5 Well (the "Well" herein). (R.2)

Thereafter, Lantz entered into a rental subcontract with Graco. (R.3) At various times between December 15, 1983 and January 17, 1984, Graco rented equipment to Lantz for its use in

¹References to the stipulated facts are to the pertinent paragraph of the Agreed Statement of the Record on Appeal, designated by an "R." (i.e. R.1, R.5, etc.); references to exhibits are to the exhibits attached to the Agreed Statement of the Record on Appeal, designated "Ex." (i.e. Ex."A", Ex."D", etc.) and also to the Addendum hereto designated "Add." (i.e. Add."1", Add."3", etc.).

²Prior to and at the time Graco provided the services which are the subject of this appeal, Ironwood was the sole owner of said lease, was the designated operator thereof, and entered into a contract with Lantz Drilling and Exploration, Inc. for the drilling of a well thereon. After Graco provided the services to said well, Ironwood assigned all of its interest to the remaining Defendants/Appellants. However, since such assignment was subject to any claims Graco may have had at the time, no differentiation is made between Ironwood and the other Defendants/Appellants for purposes of this appeal.

drilling the Well, for which Graco billed Lantz the sum of \$65.50 (Ex."B"), \$19,766.36 (Ex."C;" Add. "1"), \$10,035.32 (Ex."D"), and \$632.25 (Ex."E"), a total of \$30,499.43.³ Lantz did not pay said invoices and, on April 3, 1984, Graco timely filed a Notice of Lien (Ex."F") on the Well in the amount of \$19,766.36 (being the amount of the Ex."C" invoice). (R.4) A timely Notice of Lien was not filed by Graco with respect to the remaining invoiced amounts, which total \$10,733.07. (Id.) Lantz did not furnish a bond to assure payment of its subcontractors. (R.5) Lantz has not paid any portion of the invoices and has been adjudicated a Chapter 11 Bankrupt in a proceeding in the United States Bankruptcy Court for the Northern District of Texas. (R.6) Ironwood has not paid Graco any portion of the amounts due from Lantz under the Graco invoices but has paid Lantz, or its creditors having valid liens against its Leasehold, all but \$10,345.41 of the amount due under the contract between Ironwood and Lantz. (R.7)

On May 7, 1984, Graco initiated this action in the District Court, seeking judgment against Ironwood in the amount of \$30,433.93 under three causes of action: (1) imposition of a lien on the Well and its foreclosure, (2) unjust enrichment, and (3) failure to require a bond under § 14-2-2, Utah Code Annotated (1953, as amended). (R.8) Following the filing of cross motions for summary judgment (R.9 and R.10; Exs."G" and "H"), the District Court entered its Ruling (Ex."I") disallowing Graco's

³The parties agree that Exhibits "B", "C", "D" and "E" accurately reflect the items furnished by Graco and the value thereof.

unjust enrichment and contractor's bond claims, but finding that Graco is entitled to a lien against the Well, and foreclosure thereof, in the amount of its Notice of Lien, \$19,766.36; the Court also found that Graco was entitled to an award of attorney's fees. (R.11) Thereafter, Graco's counsel submitted Affidavits of Attorney's Fees and Costs (Ex."J") and the Court ultimately awarded Graco attorney's fees in the amount of \$3,798.75, being the entire amount shown by such Affidavits. (R.14) Such Affidavits do not differentiate between attorney's fees incurred in prosecuting the cause of action on which Graco was successful and those on which it was not. (See Ex."J").

ARGUMENT

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

As noted in the Statement of Facts, the district court allowed recovery on Graco's mechanics' lien claim in the amount of \$19,766.36 but denied recovery on its unjust enrichment or quantum meruit and contractor's bond claims. (R.11; Ex. "I") That ruling is based upon Graco's Notice of Lien (Ex. "F") which relates only to the charges reflected on Graco's December 30, 1983 invoice, number 002830 (the "Invoice" herein; Ex. "C;" Add. "1"). Therefore, the following discussion considers only the charges on that Invoice.⁴

A review of the Invoice shows that the \$19,766.36 total can be broken into four different categories of charges: (1) rental

⁴The charges reflected on the remaining invoices (Exhibits "B," "D," and "E") are the subject of Graco's cross-appeal and are not addressed here.

of equipment: \$10,039.08, including tax; (2) sale of equipment: \$5,919.14, including tax; (3) transportation charges: \$2,712.14; and (4) equipment repairs and inspection: \$1,096.00. The following discussion demonstrates that none of those charges falls within the mechanics' lien laws.

1. Rental Charges. As noted above, the Invoice includes \$10,039.08 in charges for the rental of equipment used in connection with the drilling of the Well. Rentals are not, however, among those categories of services which will support the imposition of a mechanics' lien in connection with the development of an oil well.

Prior to 1981, the mechanics' lien laws provided in pertinent part as follows:⁵

[1] 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; [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 materials, for the value of the service rendered, labor performed or materials furnished by each respectively,

⁵ Bracketed numbers have been inserted to facilitate the following discussion.

§ 38-1-3, Utah Code Annotated (1953, as amended) (Add. "2"). As noted by the court in Stanton Transportation Company vs. Davis, 341 P.2d 207, 9 Utah 2d 184 (1959), that statute reflects a compilation made by the Code Commission of four separate statutes as they existed in 1933.⁶ Id., 341 P.2d 209. In 1981, the Utah State Legislature amended the above statute⁷ to provide as follows (underlined words were inserted by the amendment and bracketed numbers are again inserted to facilitate discussion):

[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,

⁶A review of the Compiled Laws of Utah, 1917, discloses that the language following [1] was derived from § 3722, the language following [2] was derived from §§ 3731 and 3732, the language following [3] and [4] was derived from § 3722, and the provisions of § 3747 were apparently deleted as being included in the language following [1].

⁷The statute was further amended in 1987 but that amendment has no effect on this matter since Graco's lien claim, if any it has, arose prior thereto.

As can be seen, the sole purpose of the amendment was to insert provisions pertaining to the "renting" of "equipment." We conclude, therefore, that by passing the amendment, the legislators have collectively acknowledged that in their judgment the statute prior to the amendment did not cover rentals.

As noted above, the statute is composed of what were originally four separate statutes. It is also to be noted that the legislature inserted its amendment only in the language which originated in former § 3722, C.L.U. 1917 (following [1] and [4]) i.e., that portion which relates to services performed by persons involved in the construction, alteration, or improvement of buildings or premises. No amendment was made to the second portion which originated from former § 3731 (following [2]) which relates to services rendered in connection with the development of oil and gas wells and which is obviously the operative portion with respect to Graco's claim. Since the legislature clearly recognized that the renting of equipment was not previously covered by the statute, and since it saw fit to insert its amendment only in the first portion thereof, it must be concluded that the legislature did not intend to include the renting of equipment in connection with liens pertaining to the development of oil and gas wells.

In Stanton Transportation Company vs. Davis, supra, the court carefully analyzed the rules of legislative interpretation to be applied in construing the mechanics' lien laws:

While it is true that our statutes are to be liberally construed to give effect to their purpose and to promote justice, it is equally true that they should not be

distorted beyond the intent of the legislature. This principle is particularly applicable in a situation of this kind where a liability is imposed upon the property owner beyond what he contracted to bear for the improvement of his property. In order to impose upon him such additional burdens the law must clearly spell out the responsibility.

341 P.2d 210 (footnote citations omitted; emphasis added). Thus, this Court has expressly stated that the legislature must clearly and unequivocally express its intent if the lien laws are to be extended to additional applications. Since the legislature only amended as to the first portion of the statute, it cannot be said that it also intended to amend the remainder.

2. Equipment Sales. The Invoice also includes charges totaling \$5,919.14, including taxes, for the sale of equipment used in the drilling process. It is again respectfully submitted that such charges are not included within the lien laws.

The Invoice shows that five lengths of drill pipe were sold to Lantz for \$5,379.75, plus tax. Drill pipe, by its very nature, is removed from the well bore upon completion of the hole and is taken away from the site.⁸

The lien statute applies only to "materials" which are actually consumed in the project. In Stanton, supra, the same situation existed. There, a supplier sold "wrenches, screwdrivers, and other tools, parts, wire brooms and supplies" to the driller but the Stanton court disallowed a lien for those items:

⁸We do not know what the three gaskets shown on the Invoice were used for but, presumably, they also would have been removed upon completion of the drilling.

The statute was purposed to protect a contractor or laborer from loss for labor or materials actually used upon the job, but was not intended to permit one to furnish himself with permanent equipment while working on a job and claim a lien on that property . . . [T]he statute contemplates that the material to be lienable must be consumed in its use on the property.

Id., 341 P.2d 211 (emphasis added). The lien claimant has "the burden of showing just what materials were furnished and the extent to which they were consumed upon the property upon which he claims a lien." (Id.) Thus, Graco had the burden of showing that the equipment it purchased was actually consumed on the job and it has not done so. In fact, general knowledge supports a conclusion that it was not so consumed.

3. Transportation Charges. The third category of expenses shown on the Invoice are for transportation charges in the amount of \$2,712.14. Again, such charges are not such items as will support the imposition of the lien under the statute. First, they relate to the rental and sale of equipment which has already been demonstrated as not supporting a lien. If the objects which were transported will not support a lien, then obviously the transportation itself will not.

Assuming arguendo, however, that the rental and/or sales charges will support a lien, transportation charges relating thereto still will not. This issue is also put to rest by Stanton, supra. In that case, Stanton Transportation attempted to impose a lien for transporting a drilling rig to a well site. After analyzing the mechanics' lien statute, the Stanton court disallowed the lien for the transportation charges, again on the

basis that the statute did not specifically authorize a lien for such charges and they were not for materials which were actually consumed in the project. 341 P.2d 210.

4. Repair and Inspection Charges. Finally, the Invoice includes charges totaling \$1,096.00 for repairs to and inspection of the equipment. Again, Graco has failed to carry its burden as required by the Stanton court of showing that such charges relate to materials which are the proper subject of a lien. That failure alone would be sufficient to disallow the lien. However, it can also be presumed that the charges relate to the repair and inspection of the rented equipment since there would be no reason for Graco to repair and inspect equipment which did not belong to it. Thus, the services were not rendered to benefit Ironwood's property but rather to benefit Graco's interest in its own property. Clearly, charges incurred for protection of its own property will not support a lien against Ironwood's property.

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

As noted in the Statement of Facts, the district court awarded Graco attorney's fees in the amount of \$3,798.75, which was the entire amount claimed by Graco as shown by affidavits submitted by its counsel. (Ex. "J;" Adds. "4" and "5") Such affidavits themselves show, however, that the fees claimed do not relate only to the mechanics' lien claims on which judgment was entered in Graco's favor but relate also to issues upon which Graco did not prevail. Fees for the latter were improperly included in the award.

Graco claims its attorney's fees under § 38-1-18, Utah Code Annotated (1953, as amended), 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.

Ironwood concedes that the question of reasonableness of an attorney fee award generally falls within the broad discretion of the trial court but submits that the award in this case was an abuse of that discretion and was not supported by facts before the court.

Attorney's fees may be recovered only for that portion of a case for which they are contractually or statutorily allowed. "[L]iability for payment of attorney's fees extends only to the amount necessary for the enforcement of the contract." Nelson vs. Newman, 583 P.2d 601, 604 (Utah, 1978). "A party is . . . entitled only to those fees resulting from its principal cause of action for which there is a contractual (or statutory) obligation for attorney's fees." Utah Farm Production Credit Association vs. Cox, 627 P.2d 62, 66 (Utah, 1981). Thus, in Stubbs vs. Hemmert, 567 P.2d 168 (Utah, 1977), attorney fees were allowed on the successful resolution of a foreclosure claim for which there was a contractual obligation to pay attorney's fees but were denied on the unsuccessful defense of a counterclaim for which there was no such obligation. Id., 567 P.2d 171. And in Imperial-Yuma Production vs. Hunter, 609 P.2d 1329 (Utah, 1980), attorney's fees were denied in their entirety where counsel established the total amount of fees incurred but failed to make

any allocation between those fees incurred for the successful prosecution of his client's claim and those incurred in the defense of claims by the adverse party. Id., 609 P.2d 1331. The party claiming fees has the burden of producing evidence to substantiate its claim for attorney's fees. FMA Financial Corp. vs. Build, Inc., 17 Utah 2d 80, 85, 404 P.2d 670, 673-74 (1975).

With those principles in mind, we turn to the affidavits in support of the attorney's fee claims. The Affidavit of Attorney Fees and Memorandum of Costs and Expenses submitted on behalf of Graco by JoAnn B. Stringham (a portion of Ex. "J;" Add. "4") shows in paragraph 3 thereof that suit was initially brought against Lantz Drilling and Exploration, Inc. rather than the instant defendants, but that that suit was dismissed due to Lantz' having filed for bankruptcy. (See also paragraph 2 of Affidavit of Costs and Attorney Fees attached to Ex. "G".) In paragraph 4 of her affidavit, Ms. Stringham states that in prosecuting that prior action, she expended 1 hour preparing the Complaint, 4 hours preparing a Pre-Judgment Writ of Attachment, .7 hours delivering the papers to the judge, and .5 hours preparing a release of the Writ and Order. Clearly, those 6.2 hours were not expended in the perfection of Graco's mechanics' lien nor in prosecuting the foreclosure thereof and the \$620.00 charged therefor must be disallowed. It is not possible to determine from the affidavit what was done with respect to the remaining \$360.00 and, therefore, that amount should also be disallowed for the reasons discussed below.

Turning to the fees charged by Robert M. McRae, we find that Graco has failed to carry its burden of proof. As previously noted, Graco prevailed only on the lien foreclosure portion of its claims and lost on its unjust enrichment and contractor's bond claims. (R.11) If it had carried its burden of proof, Graco clearly would have been entitled to an award of attorney's fees incurred in the perfection and prosecution of its mechanics' lien claims. § 38-1-18, Utah Code Annotated (1953, as amended). Regardless of proof, however, it is not entitled to its attorney's fees incurred in the prosecution of its contractor's bond claims under § 14-2-3, Utah Code Annotated (1953, as amended). Roberts Investment Co. v. Gibbons & Reed Concrete Products, Inc., 22 Utah 2d 105, 449 P.2d 116, 118 (1969). And it would not be entitled to attorney's fees incurred in prosecution of the unjust enrichment claims since there is no contractual or statutory obligation to pay fees on such claims.

The evidence submitted in support of Graco's claims for attorney's fees fails to allocate the fees incurred in prosecution of the various claims. For instance, the Affidavit of Attorney Fees and Memorandum of Costs and Expenses submitted by Robert M. McRae (a portion of Ex. "J;" Add. "5") shows a 3 hour entry for June 14, 1984 during which time Mr. McRae conducted "research on theories in complaint." It is impossible to determine how much of that 3 hours was expended on each of the three theories. And on March 4, 1985, Mr. McRae expended 4 hours reviewing Ironwood's Motion and Memorandum for Partial Summary Judgment and researching the same. That motion and memorandum

addressed all three issues raised by Graco (see Ex. "H") but it is impossible to determine how much of the 4 hours was spent reviewing and researching with respect to the unjust enrichment and contractor's bond claims, for which Graco is not entitled to attorney's fees. With the exception of a \$100.00 flat fee Mr. McRae charged for preparation of the Notice of Lien on April 3, 1984 (which duplicated Ms. Stringham's similar \$100.00 charge for preparation of the Notice of Lien on March 29, 1984), it is impossible to determine from his affidavit how much of Mr. McRae's time was expended in prosecuting the lien foreclosure action. Therefore, Graco has failed to carry its burden of proving its attorney fee claims under Imperial-Yuma, supra, and the entire \$2,818.75 claimed on behalf of Mr. McRae must be disallowed.

CONCLUSION

It is respectfully submitted that for the reasons discussed herein, the Judgment of the district court should be reversed in its entirety and judgment rendered in favor of Ironwood. The mechanics' lien statutes do not contemplate liens for rental of equipment, the sale of equipment not consumed on the project, transportation of equipment, or inspection and repair of rental equipment. Further, Graco has failed to carry its burden of proving that its attorney fees were incurred solely for prosecution of claims on which it prevailed.

DATED this 23rd day of July, 1987.

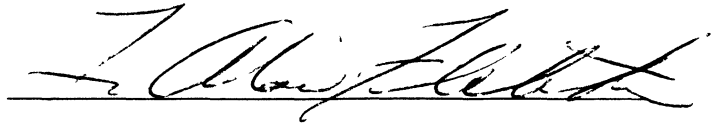
PRUITT, GUSHEE & FLETCHER


F. Alan Fletcher
Attorneys for Appellants

MAILING CERTIFICATE

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

Robert M. McRae, Esq.
McRae & DeLand
209 East 100 North
Vernal, Utah 84078
Attorneys for Plaintiffs/Respondents

A handwritten signature in cursive script, appearing to read "Robert M. McRae", written over a horizontal line.

ADDENDUM

<u>ITEM:</u>	<u>ATTACHMENT NO:</u>
Invoice	1
§ 38-1-3, Utah Code Annotated (1953, as amended) (Pre-Amendment)	2
§ 38-1-3, Utah Code Annotated (1953, as amended) (Post Amendment)	3
Affidavit of Attorney Fees and Memorandum of Costs and Expenses (Stringham)	4
Affidavit of Attorney Fees and Memorandum of Costs and Expenses (McRae)	5

ADDENDUM "1"



PLEASE REMIT TO:

GRACO
FISHING AND RENTAL TOOLS, INC.
P.O. BOX 667
VERNAL, UTAH 84078
(801) 789-6804

REF: 11980-11981

Lantz Drilling
2754 Compass Dr
Suite 155
Grand Junction, CO 81501

Date Delivered December 30, 1984

Company Ute Tribal

Lease Ute Tribal

Well # 12-5 Rig # Lantz

Ordered By Bob

Purchase Order #

Delivered By Graco-Jones

Terms: Net 30 Days FEB 08 1984

DESCRIPTION	DATE RETURNED	DAYS CHARGED	MIN. RENTAL		EACH ADD'L DAY	AMOUNT
			DAYS	AMOUNT		
4½ Drill Pipe ✓	1-17	5	\$100.00	PER DAY		\$ 500.00
HYD ✓	1-17	14	\$600.00	PER DAY		8,400.00
Kelly cock Valve	1-17	14	As Per	L&M		627.00
5Jt 4½ Drill Pipe @ \$1.075.95 Ea						5,379.75
4-R-54 Ring Gasket			As per	L&M		145.16
3-R-31 Ring Gaskets			As per	L&M		29.31
6-R-24 Ring Gasket			As per	L&M		63.00
t as per Little Bear Hot Shot			As per	L&M		712.50
t as per JOHN Bunning			As per	L&M		425.00
s on 10-900 BOP			As per	L&M	200.00	200.00
s on 10-900 Hydril			As per	L&M		360.00
ones to Deliver #312313 & 481069						1,152.00
Truck to Deliver & Return (3) 128 Miles @ \$1.10 Per Mile						422.40
tion and Straighten Pipe #10306-10815						536.00
Sub Total						18,952.30
Utah Tax on \$15,144.22						814.00
Total						19,766.30

ADDENDUM #1

EXHIBIT C

VERNAL, UTAH
11739-6304

GRACO FISHING AND RENTAL TOOLS, INC.
VERNAL, UTAH

515/358-5422
No 11981

REMIT TO: P. O. BOX 3684 • ODESSA, TEXAS 79760

Order To LANTZ DRILLING Delivered from Vernal, Utah, DECEMBER 30, 1983
Address 2754 COMPASS DR SUITE 155 Grand Junction, CO81501 Company _____
Ordered By BOB Lease CCF Tribal Well No. 12-5
Order No. _____ Rig No. LANTZ Delivered By GRACO-JONES

DESCRIPTION	Date Returned	Days Charged	MIN. RENTAL		Each Add'l. Day	AMOUNT
			Days	Amount		
4 1/2 DRILL PIPE	1-17	5	100.00	PER DAY		50.00
6 BYD	1-17	14	600.00	PER DAY		8400.00
2" HEEVEY COCK VALVE (AS PER L&M)	1-17	14				1400.00
5: 5JTS 4 1/2 DRILL PIPE @91.075.05 EA.						455.375
2: 4-R-34 RING GASKETS (AS PER L&M)						100.00
2: 3-R-31 RING GASKETS (AS PER L&M)						60.00
1: 6-R-24 RING GASKETS (AS PER L&M)						24.00
100T AS PER LITTLE BEAR HOT SHOT						200.00
100T AS PER JOHN BURNING						200.00
WIRE ON 10-000 BOP AS PER L&M						100.00
WIRE ON 10-000 INVERT AS PER L&M						100.00

ALL TOOLS ARE FOR RENTAL PURPOSES ONLY
LESS WE OTHERWISE SPECIFY. Accrued rental
charges cannot be applied against the purchase price
of tools out on rental or lost tools.

I, the undersigned, do hereby certify that I have full authority to obtain
the above listed tools and/or supplies, and to have same charged as above.
I certify that I have examined the tools and found them in good service-
able condition and accept them with the understanding that:



FISHING AND RENTAL TOOLS, INC.
VERNAL, UTAH

REMIT TO: P. O. BOX 3684 • ODESSA, TEXAS 79760

THIS IS NOT A RACIAL

CCESCA, TESS
915/388-9428
No 11980

ge To LANTZ DRILLING
 ess 2754 COMPASS DR SUITE 155 GRAND JUNCTION, CO 81501
 red By BOB
 Order No. _____

Delivered from Vernal, Utah, DECEMBER 30, 1984
 Company _____
 Lease UTE TRIBAL Well No. 12-5
 Rig No. LANTZ Delivered By GRACO JONES

DESCRIPTION	Date Returned	Days Charged	MIN. RENTAL		Each Add'l. Day	AMOUNT
			Days	Amount		
W. HENSE TO DEL # 312313 - 481069						7152.20
ACD TAX TO DEL & RET 3 "12301 @ \$1.10 2/10/1						422.40
SPECTION AND STRAIGHTEN PIPE # 10306 - 12015						536.00
3% STATE TAX ON \$15144.32						814.00
					TTL.	\$ 19716.36

ALL TOOLS ARE FOR RENTAL PURPOSES ONLY
UNLESS WE OTHERWISE SPECIFY. Accrued rental
charges cannot be applied against the purchase price

I, the undersigned, do hereby certify that I have full authority to obtain the above listed tools and/or supplies, and to have same charged as above. I certify that I have examined the tools and found them in good service.



Drilling, Completion & Production Tool
 8700 Tesoro Drive San Antonio, Texas 78286 512 28-6211
 VERNAL, UT 801/789-4860

NAL	DATE SHIPPED 12/30/83	DELIVERED VIA GRACO FISHING & RENTAL	DATE RETURNED 01/18/84	RETURNED VIA	DOCUMENT NO D-15-14
ORD NO. ...	ORDERED BY DAN RAMBO	LEASE NAME LANCE DRILLING	COUNTY/PARISH UINTAH COUNTY	DOCUMENT NO 02/02/	
	TO: GR4910-00	RENTAL PERIOD 12/30/83-01/12/84	STATUS FINAL	REF. DOC. NO. D-15-1497	CYC NO 01

GRACO FISHING & RENTAL TOOLS INC
 P O BOX 667
 VERNAL UT 840780000

PRODUCT CODE	QUAN	PRODUCT DESCRIPTION	DATE RETURNED	DAYS CHGD	MINIMUM RENTAL		EACH ADDITIONAL DAY	AMOUNT
					DAYS	AMOUNT		
IPC0000	16	W/2 NUTS EACH 1-3/8 X 10-1/2" BOLTS W/2 NUTS EACH	01/18/84			.00	.00	
IRG1017	4	API RING GASKETS R-54	01/18/84		1	.00	145.16	14
IRG1005	3	API RING GASKETS R-31	01/18/84		1	.00	29.31	2
IPC0000	6	TO SALE: PER THOMPSON STEEL & MATERIALS INV. #'S 1013 & 1014 R-24 RING GASKETS		1				6
		FREIGHT: PER LITTLE BEAR HOT SHOT INV. #12-RH/284022						71
		FREIGHT: PER JOHN BUNNING TRANSFER CO. INV. #103155 A						42
		REPAIRS: REPLACED 5 JTS 4-1/2 OD 16.60# S-135						537

"TERMS: NET 30 DAYS FROM DATE OF INVOICE. NO DISCOUNT."

RENTAL CHARGES MADE SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE

BY _____

ADDENDUM "2"

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

notice of lien. *Utah Savings & Loan Assn. v. Mecham*, 11 U. (2d) 159, 356 P. 2d 281; 12 U. (2d) 335, 366 P. 2d 598, 15 A. L. R. 3d 63.

The mechanics' lien statutes are designed to prevent the landowner from taking the benefit of improvements placed on his property without paying for the labor and materials that went into it. *King Bros., Inc. v. Utah Dry Kiln Co.*, 13 U. (2d) 339, 374 P. 2d 254.

Because of the common purpose of the mechanics' lien statutes and contractor's bond statutes (14-2-1, 14-2-2), and their practically identical language, adjudications as to what is lienable under the former are helpful in determining the proper application of the latter. *King Bros., Inc. v. Utah Dry Kiln Co.*, 13 U. (2d) 339, 374 P. 2d 254.

Architects.

This section recognizes the lien of licensed architects. *Headlund v. Daniels*, 50 U. 381, 167 P. 1170.

In an action by architect to file mechanic's lien and sue to foreclose interests of both lessor and lessee of property, trial court properly held that such architect can file such lien notwithstanding that plans might not be brought to fruition by erection of building; the court improperly granted judgment to architect as matter of law since there is no basis to conclude that lessor impliedly authorized lessee to engage an architect so as to bind lessor's interest in respect to services rendered. *Zions First Nat. Bank v. Carlson*, 23 U. (2d) 395, 464 P. 2d 387.

Creation and existence of lien.

There is no mechanic's lien if party contracting for labor or materials refuses to comply with contract before other party has done any work or furnished any materials. It is otherwise where contract is repudiated after work has commenced or after materials have been furnished. *Garland v. Bear Lake & River Waterworks & Irr. Co.*, 9 U. 350, 34 P. 368, *affd.* 164 U. S. 1, 41 L. Ed. 327, 17 S. Ct. 7.

Where husband's contract for erection of dwelling house on land owned by wife was entered into without consent and over protest of wife, materialman is not entitled to lien for materials which went into house. *Morrison, Merrill & Co. v. Clark*, 20 U. 432, 59 P. 235, 77 Am. St. Rep. 924, explained in 117 U. 454, 217 P. 2d 392.

Contract express or implied must be made with owner of land or his authorized agent in order successfully to initiate lien. *Eccles Lbr. Co. v. Martin*, 31 U. 241, 87 P. 713.

Vendor of land under contract of sale is not bound by mechanic's lien to pay for improvements made by vendee in possession, in absence of express or implied authority from vendor to bind his interest, or by subsequent ratification. *Belnap v. Condon*, 34 U. 213, 97 P. 111, 34 L. R. A. (N. S.) 601, distinguished in 92 U. 92, 66 P. 2d 134.

A subcontractor's lien for the amount of the unpaid balance on the subcontract and for a separate sum for extra labor and material furnished at the instance of the owner is not waived, released or surrendered by his signing of document releasing lien rights for labor and materials furnished under the written contract, but reserving rights as to extra labor and materials furnished. *Davis v. Barrett*, 24 U. (2d) 162, 467 P. (2d) 603.

Foreclosure of lien.

An action to foreclose a mechanic's lien cannot be instituted against the owner of the premises where alterations are made at cost and expense of lessee, under agreement with landlord that there is to be no liability on his part, or any charge against his property. *Gorman v. Birrell*, 41 U. 274, 125 P. 685.

Plaintiff has no cause of action against defendant to foreclose mechanic's lien for electrical equipment furnished and work done on property owned by defendant based on theory that equipment is furnished and work done at request of defendant's husband while acting as her agent, where evidence discloses that defendant held mere legal title to the property and is not the true owner, that although husband purchases property and has deed executed in defendant's name, he has treated property in every respect as his own, and where there is no evidence to show that work is done either for or on behalf of defendant. *Capitol Electric Co. v. Campbell*, 117 U. 454, 217 P. 2d 392.

Judgment.

In action to foreclose mechanic's lien, personal judgment can be rendered against person personally liable, when lien fails. *Volker-Scowcroft Lbr. Co. v. Vance*, 36 U. 348, 103 P. 970, 24 L. R. A. (N. S.) 321, Ann. Cas. 1912A, 124.

In action to foreclose mechanic's lien, court's refusal to award personal judgment on failure of lien is not erroneous where no demand is made in complaint for personal judgment, and neither plaintiff nor other lien claimants in any manner have asked for personal judgment in any of proceedings had before case is finally submitted. *Volker-Scowcroft Lbr. Co. v. Vance*, 36 U. 348, 103 P. 970, 24 L. R. A. (N. S.) 321, Ann. Cas. 1912A, 124.

Landscaping.

Landscaping done during construction of home as integral part of construction and contributing toward enjoyment of living in home is proper subject of mechanic's lien as improvement upon land. *Frehner v. Morton*, 18 U. (2d) 422, 424 P. 2d 446.

Leasehold interests.

If repairs and improvements are put on premises under contract with lessee of premises, and thereafter lessor buys unexpired term of lease, there is no merger of the estates so as to deprive lien holder of his lien upon property to extent of the leasehold interest, although lien was not of record when lessor purchased lease. *Ellis v. Brisacher*, 8 U. 108, 29 P. 879.

Lessee is an owner within the meaning of the mechanics' lien statutes. *Buehner Block Co. v. Glezos*, 6 U. (2d) 226, 310 P. 2d 517.

Lienable items.

A transportation company is not entitled to a lien for the cost of transporting an oil well drilling rig to the well site, but is entitled to a lien for the labor furnished in erecting the drilling rig. An equipment company is entitled to a lien for the rental value of rock-drilling bits furnished a defaulting contractor, but is not entitled to a lien for the value of tools and equipment furnished the driller. *Stanton Transportation Co. v. Davis*, 9 U. (2d) 184, 341 P. 2d 207.

Mines and mining.

A superintendent of a mine has a lien on the mine for his salary or wages which, if perfected in the manner prescribed by statute, may be foreclosed, and will take priority over subsequent judgment liens. *Venard v. Green*, 4 U. 67, 6 P. 415, 7 P. 408.

Mechanic's lien on mine and mining claim is controlled by this section. *Park City Meat Co. v. Comstock Silver Mining Co.*, 36 U. 145, 103 P. 254.

For purpose of acquiring mechanics' liens against mining claims where operated as mine, the mining claims constitute mine and all property necessarily used and connected with mining and mining claims, including easements. *Park City Meat Co. v. Comstock Silver Mining Co.*, 36 U. 145, 103 P. 254.

Notice of lien.

Where the basic requirements of creating a lien are met, it is not essential that the names of others whose interests might be affected be listed on the notices of the lien. *Buehner Block Co. v. Glezos*, 6 U. (2d) 226, 310 P. 2d 517.

Owner defined.

A lien for work done upon a canal constructed upon the public lands attaches in favor of a materialman since the ownership of the canal and the right of way therefor vest in the owner of the canal. *Garland v. Bear Lake & River Waterworks & Irr. Co.*, 9 U. 350, 34 P. 368, aff'd. 164 U. S. 1, 41 L. Ed. 327, 17 S. Ct. 7.

One in possession of land under a contract of purchase is an owner within meaning of this section. *Cary-Lombard Lbr. Co. v. Sheets*, 10 U. 322, 37 P. 572.

One having an equitable interest in the premises is an owner within the meaning of this section. But such lien may also be extended to any other or greater interest which such owner may acquire to such property thereafter, and before lien is established by process of law. *Cary-Lombard Lbr. Co. v. Sheets*, 10 U. 322, 37 P. 572.

In action to foreclose materialman's lien where defendant has selected and claimed two lots on which she has erected dwelling as her homestead, and value of such lots, together with improvements thereon does not exceed her homestead exemption, materialman is not entitled to lien unless when material is furnished defendant is then owner of other lands separate and apart from the two lots, and which independently of them constitute her homestead and has equaled or exceeded value of her homestead exemption. *Volker-Scowcroft Lbr. Co. v. Vance*, 36 U. 348, 103 P. 970, 24 L. R. A. (N. S.) 321, Ann. Cas. 1912A, 124.

Person defined.

The word person in this section includes a corporation. *Doane v. Clinton*, 2 U. 417.

Priorities.

Lien for all of materials furnished by single lien claimant on continuous, open, running account, for purpose of developing and operating mine, was prior to trust deed executed by mining company and recorded between times when materials are first and last furnished. *Fields v. Daisy Gold Mining Co.*, 25 U. 76, 69 P. 528; *Salt Lake Hardware Co. v. Fields*, 69 P. 1134, not officially reported.

In action involving priority between mortgages and mechanic's lien, whether all materials furnished during certain period are furnished under one contract or under different contracts is question of fact. *Gwilliam Lbr. & Coal Co. v. El Monte Springs Corp.*, 87 U. 134, 48 P. 2d 463.

Property and interests subject to lien.

Mechanic's lien attaches to land, and, unless person against whom claim for mechanic's lien is made has some interest or

estate in land upon which improvement is made, no lien attaches to improvement as such. *Eccles Lbr. Co. v. Martin*, 31 U. 241, 87 P. 713.

A wife's interest in her husband's property, except the homestead, is subject to claims secured by mechanics' or laborers' liens for work or labor done or material furnished exclusively for the improvement of the same. *Langton Lime & Cement Co. v. Peery*, 48 U. 112, 159 P. 49.

Single man after entering into contract to erect house on his lot, cannot after completion of work, by entering into marriage relationship, claim such property as homestead, and, as such, exempt against mechanic's lien. *Evans v. Jensen*, 51 U. 1, 168 P. 762, L. R. A. 1918B, 812.

Protection of subcontractor by owner.

Owner has right to retain enough of original contract price to cover lien of subcontractor, and to apply amount thus retained in satisfaction of such lien. *Sierra Nevada Lbr. Co. v. Whitmore*, 24 U. 130, 66 P. 779.

Scope and extent of lien.

In absence of special contract fixing value of services, limit of lien is services' reasonable value. *Sierra Nevada Lbr. Co. v. Whitmore*, 24 U. 130, 66 P. 779.

Waiver, loss or forfeiture of lien.

Where there is substantial compliance with statute creating lien, and lien has in fact been established, lien so established cannot be defeated by technicalities nor by nice distinctions. *Park City Meat Co. v. Comstock Silver Mining Co.*, 36 U. 145, 103 P. 254.

Collateral References.

Mechanics' Liens—79.

57 C.J.S. Mechanics' Liens § 86.

53 Am. Jur. 2d 575, Mechanics' Liens § 65.

After-acquired title as supporting lien, 52 A. L. R. 693.

Arbitration proceeding as affecting mechanic's lien or liability on owner's bond given to discharge lien, 93 A. L. R. 1151.

Canals, drains, ditches and wells within term of law descriptive of improvement, 92 A. L. R. 753.

Character of service contemplated by statutes giving a lien or preference, in event of insolvency, to servants, employees, laborers, etc., 111 A. L. R. 1453, 142 A. L. R. 362.

Charge for use of machinery, tools, or appliances in construction as basis for mechanic's lien, 3 A. L. R. 3d 573.

Church property as subject of lien, 85 A. L. R. 953.

Delivery of material to building site as sustaining mechanic's lien, 39 A. L. R. 2d 394.

Destruction, demolition, removal of, or damage to improvement as affecting mechanic's lien, 74 A. L. R. 428.

Effect of bankruptcy of contractor or subcontractor upon mechanics' liens of his subcontractors, laborers and materialmen, 98 A. L. R. 323.

Enforceability of a mechanics' lien against the property of a married woman for work performed or materials furnished under a contract made with her husband, 4 A. L. R. 1025.

Freight charges on material as within mechanic's lien statute giving lien for labor or material, or within contractor's bond securing such claims, 30 A. L. R. 466.

Interest of owner of land as subject to lien for material or service engaged by holder of mineral rights, 59 A. L. R. 548.

Interest of spouse in estate by entirety as subject to mechanic's lien in satisfaction of his or her individual debt, 75 A. L. R. 2d 1192.

Interest of vendor under executory contract for sale of realty as subject to mechanic's lien for labor or materials furnished to purchaser, 102 A. L. R. 233.

Knowledge of owner of improvements or repairs, intended or in process under orders of lessee or vendee, as "consent," which will subject his interest to mechanics' liens, 4 A. L. R. 685.

Labor in examination, repair, or service of fixtures, machinery, or attachments in building, as supporting a mechanics' lien, or as extending time for filing such a lien, 51 A. L. R. 3d 1087.

Lessee as agent of lessor within contemplation of lien laws, 79 A. L. R. 962, 163 A. L. R. 992.

Lien as affected by agreement to pay with property other than money, 81 A. L. R. 766.

Lien for building erected by licensee, 45 A. L. R. 581.

Lien for labor or material for improvement of easement, 77 A. L. R. 817.

Lien for material specially fabricated for and adapted to building, but not used therein, 33 A. L. R. 320.

Lien for services of person supervising construction of building, architect, etc., 60 A. L. R. 1257.

Material or labor employed in construction of concrete forms as basis of lien or claim under contractors' bond, 84 A. L. R. 460.

Mechanic's lien based on contract with vendor pending executory contract for sale of property as affecting purchaser's interest, 50 A. L. R. 3d 944.

Mechanic's lien for landscaping, 39 A. L. R. 2d 866.

Mechanic's lien for services in connection with subdividing land, 87 A. L. R. 2d 1004.

Mechanic's lien for work under water well-drilling contract, 90 A. L. R. 2d 1422.

Mechanic's or materialman's lien on homestead, 65 A. L. R. 1192.

Owner's right to deduction on account of damages sustained through contractor's delay, 37 A. L. R. 766.

Owner's right to recover from contractor or surety on his bond amount paid or agreed to be paid by former to third person, in order to avoid mechanics' liens for labor or material furnished to contractor, 134 A. L. R. 314.

Power of court to authorize or direct receiver (or trustee in bankruptcy) to sell property free from liens, 35 A. L. R. 255, 78 A. L. R. 458, 120 A. L. R. 921.

Pre-existing indebtedness of contractor to owner as affecting right of subcontractor, materialman, or laborer to lien, 68 A. L. R. 1262.

Promise to pay lien as embracing promise to pay debt, 10 A. L. R. 891.

Provisions of statutes to secure payment for work or labor as including use of laborer's own team, automobile, or other equipment, 71 A. L. R. 1136.

Release of contractor's lien as affecting subcontractor's lien, 69 A. L. R. 1205.

Removal or demolition of building or other structure as basis for mechanic's lien, 63 A. L. R. 1250.

Requirement of written contract as condition of mechanic's lien as affected by an oral modification, or a modification partly oral and partly written, of a written contract, or a subsequent modification in writing not registered or filed as required by statute, 108 A. L. R. 434.

Right of one other than contractor, laborer, or materialman to file lien, 83 A. L. R. 11.

Right of one who pays or advances money, or assumes obligation to pay laborer or materialman, to lien or priority, 74 A. L. R. 522.

Right of subcontractor or materialman

to mechanic's lien for labor or material entering into work rejected as not in compliance with principal contract, 16 A. L. R. 981.

Rights and remedies under lien statute of one performing work only part of which is of a lienable character, 149 A. L. R. 682.

Right to benefit of mechanic's lien statute for labor or material furnished to contractor or subcontractor, as affected by acceptance from him of written obligation, 66 A. L. R. 342.

Right to lien against fee for work or material furnished under contract with life tenant, 97 A. L. R. 870.

Right to mechanic's lien as for "labor" or "work," in case of preparatory or fabricating work done on materials intended for use and used in particular building or structure, 25 A. L. R. 2d 1370.

Right to mechanic's lien upon leasehold for supplying labor or material in attaching or installing fixtures, 42 A. L. R. 2d 685.

Surveyor's work as giving rise to right to mechanic's lien, 35 A. L. R. 3d 1391.

Swimming pool as lienable item within mechanic's lien statute, 95 A. L. R. 2d 1371.

Taking or negotiation of unsecured note of owner or contractor as waiver of mechanics' lien, 91 A. L. R. 2d 425.

Termination of lease as affecting lien on buildings erected by tenant where lien did not attach to landlord's title, 87 A. L. R. 1290.

Validity and effect of provision in contract against mechanic's lien, 76 A. L. R. 2d 1087.

Validity of statute making private property owner liable to contractor's laborers, materialmen, or subcontractors where owner fails to exact bond or employ other means of securing their payment, 59 A. L. R. 2d 885.

Law Reviews.

Note: The Utah Law of Mechanics Liens, 1966 Utah L. Rev. 181.

Landscaping and the Mechanics' Lien Law, 1968 Utah L. Rev. 452.

DECISIONS UNDER FORMER LAW

Laborer defined.

Under provisions of former law a superintendent or foreman of a mine was considered a laborer. *Cullins v. Flagstaff Silver Mining Co.*, 2 U. 219, *affd.* 104 U. S. 176, 26 L. Ed. 704.

Leasehold interests.

Under former statute, lessee's covenant to expend specified sum for permanent improvements on leased premises did not,

of itself, give contractor, furnishing materials and labor at special instance of lessee, lien on lessor's interest in property. *Morrow v. Merritt*, 16 U. 412, 52 P. 667.

Separate liens.

Formerly the liens of the principal contractor and the subcontractor were separately provided for. *Morrison v. Carey-Lombard Co.*, 9 U. 70, 33 P. 238.

ADDENDUM "3"

38-1-3. Those entitled to lien — What may be attached.

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 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. This lien shall attach only to such interest as the owner may have in the property.

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; 1981, ch. 170, § 1; 1987, ch. 170, § 1.

Compiler's Notes. — The 1981 amendment inserted references to renting and equipment throughout the section.

The 1987 amendment deleted "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" following "manner" in the first sentence, rewrote the second sentence so as to delete a provision relating to the interest of a lessee of a mining claim, and made minor changes in phraseology.

ANALYSIS

Improvement.

Leasehold interests.

Property and interests subject to lien.

Purpose and construction.

Remedies pursued simultaneously.

Waiver, loss or forfeiture of lien.

Improvement.

The broad language in this section, "improvement to any premises in any manner," encompasses installation of sewer and water systems on property. *First of Denver Mortgage Investors v. C. N. Zundel & Associates* (Utah 1979) 600 P 2d 521.

Leasehold interests.

The mere existence of a lessor-lessee relationship, without more, does not justify charging the lessor's interest with a mechanic's lien for improvements made on the property at the instance of the lessee; the statutory language "at the instance of ..." requires either an express or implied contract between the lessor or his agent and the contractor. *Interiors Contracting Inc. v. Navalco* (Utah 1982) 648 P 2d 1382.

A lessee may be an "owner" within the meaning of this section and his leasehold may be subjected to a mechanic's lien. *Interiors Contracting Inc. v. Navalco* (Utah 1982) 648 P 2d 1382.

Property and interests subject to lien.

Where, at the direction of the owners, a water line was constructed on one lot and then proceeded along a common boundary with and then crossed over onto another lot so that it was accessible to both lots, the water line constituted an improvement on both lots where the development of both lots was anticipated by the owners. *Harris-Dudley Plumbing Co. v.*

Professional United World Travel Assn. (Utah 1979) 592 P 2d 586.

Where the record showed no more than fee owner's knowledge of and acquiescence in the making of improvements by a sublessee to accommodate the premises for a restaurant, such showing was not sufficient to charge the fee owner's interest with a mechanic's lien for the improvements made by the sublessee; especially since the fee owner was a remote lessor and the master lease between it and its lessee did not contemplate that the premises were to be used as a restaurant. *Interiors Contracting Inc. v. Navalco* (Utah 1982) 648 P 2d 1382.

Purpose and construction.

The purpose of the mechanics' lien act is remedial in nature and seeks to provide protection to laborers and materialmen who have added directly to the value of the property of another by their materials or labor. *Calder Bros. Co. v. Anderson* (Utah 1982) 652 P 2d 922.

Remedies pursued simultaneously.

Both the foreclosure of a mechanic's lien and a judgment on the contract debt may be pursued and obtained simultaneously, with relief limited to but one satisfaction of the debt. *Harris-Dudley Plumbing Co. v. Professional United World Travel Assn.* (Utah 1979) 592 P 2d 586.

Waiver, loss or forfeiture of lien.

Where evidence disclosed an existing prac-

38-1-4

LIENS

tice of dealing between contractor and subcontractor, whereby subcontractor executed blank lien waivers and releases to contractor and gave contractor authority to complete the instruments, trial court properly found lien

waiver, executed by subcontractor's employee according to such procedure, to be valid. LeGrand Johnson Constr. Co. v. Kennedy (Utah 1975) 541 P 2d 1038.

ADDENDUM "4"

JoANN B. STRINGHAM, #0353
McRAE & DeLAND
Attorneys for Plaintiffs
209 East 100 North
Vernal, Utah 84078
Telephone: 789-1666

IN THE SEVENTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
STATE OF UTAH

GRACO FISHING & RENTAL	:	
TOOLS, INC., and I.G.	:	
SPECIALTY MACHINE SHOP,	:	AFFIDAVIT OF ATTORNEY
	:	FEES AND MEMORANDUM
Plaintiffs,	:	OF COSTS & EXPENSES
vs.	:	
IRONWOOD EXPLORATION, INC.,	:	Civil No. 84-CV-72-D
R.D. POINDEXTER, HORIZON	:	
OIL & GAS COMPANY, WILLIAM H.	:	
WALTON and ARDEN A. ANDERSON,	:	
Defendants.	:	

STATE OF UTAH)
 : ss.
County of Uintah)

JoANN B. STRINGHAM, being first duly sworn upon her
oath, deposes and states that:

1. She is one of the attorneys for plaintiffs above
named.

2. The original contractor on defendants' mineral
lease was Lantz Drilling & Exploration, Inc.

3. As a result of performing services, labor and
materials for Lantz and non-payment a civil action was

commenced in the District Court of Uintah County, which civil action was subsequently dismissed because of Lantz filing a Chapter 11 Bankruptcy proceeding.

4. Affiant spent the following time attempting to enforce plaintiffs' lien rights and recover from defendants moneys owed plaintiffs:

03/05/84	.5 conference w/client; .2 phone
03/06/84	1 hr. preparation of Complaint
03/06/84	4 hr. preparation of Pre-Judgment Writ of Attachment
03/06/84	1 hr. research at Duchesne County Recorder's Office
03/07/84	.7 delivering papers to Judge
03/08/84	.1 phone and conference w/Mr. McRae
03/08/84	.2 review file
03/29/84	1 hr. preparation of Notice of Lien
04/02/84	.4 phone with Alan Fletcher
04/12/84	.2 phone with Fletcher
04/27/84	.5 preparation of Release of Writ & Order

My hourly rate is \$100.00 per hour and a reasonable sum for the above legal services is the sum of \$980.00.

4. The following costs were expended by plaintiffs in the above entitled action:

Filing Complaint, Order to Show Cause and Writ of Attachment	\$ 60.00
Tarrant County Sheriff	60.00
Recorder's Office for copies	2.80
Long Distance phone charges	20.00
Total costs:	\$ 142.80

DATED this 20th day of August, 1985.


JOANN B. STRINGHAM
Attorney for Plaintiffs

Subscribed and sworn to before me on this 21st day
of August, 1985.

My commission expires:
3-19-88

Melinda Ballins
NOTARY PUBLIC
Residing at Vernal, Utah

CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, a
true and correct copy of the foregoing to John F. Waldo,
Attorney for Defendants, 1850 Beneficial Life Tower, Salt Lake
City, Utah 84111 on this 21st day of August, 1985.

John F. Waldo

ADDENDUM "5"

ROBERT M. McRAE, #2217
McRAE & DeLAND
Attorneys for Plaintiffs
209 East 100 North
Vernal, Utah 84078
Telephone: 789-1666

IN THE SEVENTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
STATE OF UTAH

GRACO FISHING & RENTAL	:	
TOOLS, INC., and I.G.	:	
SPECIALTY MACHINE SHOP,	:	AFFIDAVIT OF ATTORNEY
	:	FEEES AND MEMORANDUM
Plaintiffs,	:	OF COSTS & EXPENSES
vs.	:	
IRONWOOD EXPLORATION, INC.,	:	Civil No. 84-CV-72-D
R.D. POINDEXTER, HORIZON	:	
OIL & GAS COMPANY, WILLIAM H.	:	
WALTON and ARDEN A. ANDERSON,	:	
Defendants.	:	

STATE OF UTAH)
 : ss.
County of Uintah)

ROBERT M. McRAE, being first duly sworn upon his
oath, deposes and states that:

1. He is an attorney licensed to practice law in the
State of Utah and has been for the last 25 years and his
hourly rate is \$125.00 per hour.

2. He is the attorney for plaintiffs above named.

3. He has performed the following services on behalf
of plaintiffs in the above referenced matter:

04/02/84	1/2 hr. conference with client
04/03/84	\$100 flat fee - preparation of Notice of Lien
05/08/84	2 hr. preparation of Lis Pendens, Summons, Complaint, letter to Constable in Dallas, Texas, and Letter to Sheriff in Florida
06/14/84	1 hr. review Answer with complaint & client
06/14/84	1/2 hr. review. First Request for Production of Documents and Notice of Entry of Appearance and Joinder in Answer & Request for Production of Documents
06/14/84	3 hr. research on theories in complaint
06/20/84	1/2 hr. preparation of Response to Request for Production of Documents
06/20/84	1/3 hr. preparation of Interrogatories
08/03/84	1/3 hr. preparation of Motion to Compel Answers to Interrogatories
08/15/84	1/3 hr. reviewing letter from defendant's counsel
08/21/84	1 hr. reviewing defendants' Reply to plaintiffs' Interrogatories with client
08/23/84	1/3 hr. preparation of Request for Trial Setting
08/23/84	1/3 hr. preparation of Motion to Compel and Memorandum of Points & Authorities
09/12/84	1/3 hr. reviewing defendants' Response to Request for Trial Setting and Response to plaintiffs' Motion to Compel
09/17/84	1/3 hr. preparation of letter of notification to client re: 11/26/84 trial date
09/28/84	1/3 hr. preparation of letter of notification to client re: trial date changed to 1/7/85
02/19/85	1/3 hr. preparation of letter of notification to client re: trial date changed to 5/28/85 and denying plaintiffs' Motion to Compel
02/20/85	1/2 hr. preparation of Motion for Summary Judgment and Affidavit of Costs & Attorney Fees
02/20/85	1 hr. review Affidavit of James L. Smarr and search county recorder's records
03/04/85	4 hr. review and research on defendants' Motion for Partial Summary Judgment and Memorandum of Points & Authorities; conference with client
03/20/85	1/2 hr. preparation of Demand for Production of Documents
04/22/85	1/4 hr. reviewing Ruling by Judge Davidson

04/26/85 2 hr. preparation of Findings of Fact and
Conclusions of Law and Judgment
08/19/85 2 hrs. preparation of Affidavit for
Attorney Fees and review of file

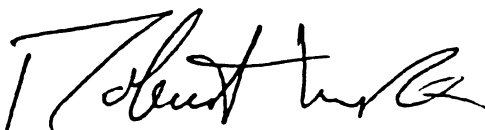
A reasonable sum for the above legal services is \$2,818.75.

4. The following costs were expended by plaintiff in
the above entitled action:

Postage for mailing Notice of Lien	\$ 4.65
Filing Complaint	50.00
Recording Lis Pendens	6.00
Escambia County Sheriff	12.00
Dallas County Sheriff	65.00
Duchesne County Recorder	2.50
Beehive Attorney Service	4.75
Duchesne County Sheriff	25.60
Long distance charges	18.90

Total costs: \$189.40

DATED this 19 day of August, 1985.



ROBERT M. McRAE
Attorney for Plaintiffs

Subscribed and sworn to before me on this 19th day of
August, 1985.

My commission expires:

3-19-88



NOTARY PUBLIC
Residing at Vernal, Utah

CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, a
true and correct copy of the foregoing to John F. Waldo,
Attorney for Defendants, 1850 Beneficial Life Tower, Salt Lake
City, Utah 84111 on this ^{21st} ~~19th~~ day of August, 1985.

