

1959

Stanton Transportation Company et al v. Marvin Davis et al : Reply Brief of Appellant

Utah Supreme Court

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Sterling D. Colton; Alvin J. Meiklejohn, Jr.; Attorneys for Plaintiff and Appellant;

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In the
Supreme Court of the State of Utah

STANTON TRANSPORTATION COM-
PANY, a corporation,
Plaintiff and Appellant,

CONTINENTAL EMSCO COMPANY,
a division of YOUNGSTOWN
SHEET & TUBE COMPANY, a cor-
poration,

vs. *Plaintiff,*

MARVIN DAVIS, JACK DAVIS,
JEAN DAVIS and JOAN PRESTON,
partners, doing business under the
firm name of DAVIS OIL COM-
PANY,

Defendants and Respondents.

FILED

MAY 1 - 1959

Clerk, Supreme Court, Utah

Case No.
8951

REPLY BRIEF OF APPELLANT

STERLING D. COLTON,
For Van Cott, Bagley,
Cornwall & McCarthy,

ALVIN J. MEIKLEJOHN, JR.,
*Attorneys for Plaintiff
and Appellant.*

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REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Parties and others will be referred to herein as follows:
Stanton Transportation Company will be referred to as
"Stanton" or "appellant;" Davis Oil Company and its part-
ners as "Davis" or "respondents" and Walker & Wilson
Drilling Company as "Walker-Wilson" or "driller." The
following abbreviations will be used: "R" for clerk's files;

“TRA” for transcript of hearing on September 20, 1957, and “TRB” for the transcript of hearing on November 5 and 6, 1957.

STATEMENT OF FACTS

The disagreement between the statement of facts of the respective parties is negligible and the additional facts stated by respondents are without legal significance.

STATEMENT OF POINTS

POINT I.

UTAH MECHANICS' LIEN STATUTE GIVES LIEN TO PERSON WHO TRANSPORTS DRILLING EQUIPMENT TO WELL SITE WHERE IT IS USED TO DRILL OIL WELL.

- (a) Language of Statute is Clear and Unambiguous
- (b) Utah Statute to be Construed Liberally
- (c) Legislative History and Wording of Statute

POINT II.

THE CONTRACT BETWEEN DAVIS AND THE DRILLER COVERED THE COST OF TRANSPORTATION.

POINT III.

TRANSPORTATION IS A LIENABLE ITEM UNDER MECHANICS' LIEN STATUTES.

ARGUMENT

POINT I.

UTAH MECHANICS' LIEN STATUTE GIVES
LIEN TO PERSON WHO TRANSPORTS DRILL-
ING EQUIPMENT TO WELL SITE WHERE
IT IS USED TO DRILL OIL WELL.

Both appellant and respondents recognize in their respective briefs that the sole question before the Court on this appeal is whether Stanton is entitled to a lien for the value of work performed in transporting drilling equipment to a well site where it was used to drill the Davis well and that the answer to this question depends upon whether Stanton did work for the development of the Davis oil well within the meaning of the Utah mechanics' lien statute. The governing statute is Section 38-1-3, Utah Code Annotated, which is set forth in detail on page 9 of appellant's brief. The applicable portion of this statute provides as follows:

“* * * All persons who shall do work or
furnish materials for the prospecting, development,
preservation or working of any oil or gas well,
* * * shall have a lien upon the property upon
or concerning which they have rendered service, per-
formed labor or furnished materials, for the value
of the service rendered, labor performed or mater-
ials 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
* * *”

(a) Language of Statute is Clear and Unambiguous

Respondents argue that the language of the statute is not broad enough to give liens to persons who perform work such as that performed by Stanton. A reading of the statute shows that the language used by the Legislature is extremely broad and the terms used are clear and unambiguous. We have found no other statute and respondents have cited none which contains language nearly so broad in describing persons who do work connected with oil wells who are entitled to liens.

There can be no question that the work done by Stanton was done solely for the purpose of developing an oil well on the Davis property. The trial court found and respondents have not questioned the finding, that Davis knew that in order to drill a well it would be necessary to obtain specialized cranes and trucks to move the drilling equipment to the well site and to assist in erecting it thereon (R. 78). The proposed well site was in an isolated area in southeastern Utah. Without drilling equipment there would be no well. Without Stanton's trucks or trucks similar thereto, the drilling equipment would never have reached the well site. The only reason for Stanton to transport drilling equipment to such an isolated spot was so that the Davis well could be drilled. To hold that such work was not for the development of an oil well would require a warping of the language of the statute or a reading into it of restrictions that are not there.

(b) Utah Statute to be Construed Liberally

Respondents on page 6 of their brief recognize that this Court in construing the Utah statute is bound by the provisions of Section 68-3-2, U. C. A., 1953, which provides that:

“The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice.”

The object of mechanics' lien statutes as discussed on pages 21 through 25 of appellant's brief is to insure that those who enhance the value of property belonging to another by their work or labor shall be paid.

Respondents cite Section 13, American Jurisprudence, Mechanics' Liens, as authority for the proposition that the weight of authority holds that mechanics' liens are to be strictly construed as to the class or classes of persons who may assert the lien. Section 13 also states that there is authority to the effect that the liberal rule of construction should be used. Regardless of what the law may be elsewhere, the Utah courts are bound by Section 68-3-2, and it does not exclude the provisions of the Utah mechanics' lien statute from the rule that the provisions of Utah statutes in derogation of the common law shall be liberally construed. That the rule is to be applied even to provisions providing for the class of people who are within the scope of the statute is evidenced by the fact that the Utah Supreme

Court has applied it elsewhere in determining what persons come within the scope of a Utah statute which was in derogation of the common law. *In re Garr's Estate*, 31 Utah 57, 86 Pac. 757.

Respondents also contend on page 6 of their brief that even though the rule of liberal construction applies in Utah, the "courts cannot create rights and should not do so by unnatural or forced construction." With this position we concur. By the same token, the courts cannot deprive a person of rights by giving a statute such a construction. We submit that to hold that Stanton did not do work for the development of the Davis well would result in a forced and unnatural construction of the statute.

(c) Legislative History and Wording of Statute

The wording of the Utah statute and its legislative history show that the Legislature intended to give a broader coverage to persons connected with the mining and oil industries than to persons in other categories and did intend to restrict liens to persons who are upon the subject premises at the time they perform the work. Respondents argue on pages 8 through 17 of their brief that there is no significance in the fact that the Legislature used different wording in describing the persons in different categories who are entitled to liens. Such an argument is contrary to the well recognized rules of statutory construction that when the Legislature uses words in a statute it is presumed that it intended to use them and knew their meaning, that every word was intended to serve some useful purpose and each word is to be given some effect. Conversely, it is not

to be presumed that the Legislature intended any word to be meaningless, redundant, or useless. 86 C. J. S., Statutes, Section 316, p. 549.

Ever since the Legislature first made provision for mechanics' liens in Utah, it has separated the persons entitled to liens into different categories depending upon the nature of their work. In describing the persons within each category who are entitled to liens, it has used different language. Due to the nature of mining and related industries, persons doing work in connection therewith have been placed in a separate category since prior to 1898. See Section 1381, Rev. Stat. 1898. The language used in connection with this category gives broader coverage than any of the others.

Prior to 1933 the categories were described in different statutory sections. See Sections 3722, 3731 and 3747 of Compiled Laws of 1917. When the Utah laws were revised in 1933, these sections were consolidated into Section 52-1-3, Revised Statutes of 1933, which is now Section 38-1-3, U. C. A., 1953. The distinction between the various categories of persons was maintained after the revision and the basic differences in the wording used to describe the persons within each category who were entitled to liens remained the same. At the time of the revision, the words "oil and gas well" were added to the category related to the mining industry. Thus the Legislature expressly recognized that all persons who do work for the prospecting, development, preservation or working of any oil and gas shall be entitled to a lien.

The fact that the Legislature felt that it was necessary to separate persons into different categories and continued the distinction after the 1933 revision coupled with the different language used in describing those entitled to liens within each category is a strong indication that the Legislature intended that they should be treated differently. For this reason, the particular wording used is very important in determining the legislative intent.

The present statute divides those entitled to liens into the following classes:

(a) Contractors, subcontractors and all persons performing 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;

(b) All foundry men and boiler makers;

(c) All persons performing labor or furnishing materials for the construction, repairing or carrying on of any mill, manufactory or hoisting works;

(d) 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

(e) Licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendency, or who have rendered other like professional service, or bestowed labor.

Since classes (b) and (e) are limited to persons who do particular types of work, our remarks regarding differences in wording are directed to the other three classes. The first distinction in wording is that class (d) which is the class that relates to oil wells is the only class which gives liens to persons who *do work for*. Class (a) is limited to persons who perform *labor* upon and (c) to persons who perform *labor* for. As pointed out in appellant's brief at pages 12 and 13, the courts have long recognized that the word "work" is much more comprehensive than the term "labor." This point is not disputed by respondents. The courts have long recognized that transportation is covered by such terms. *In re Hope Mining Company*, 1 Sawy. 710, Fed. Cas. No. 6,681, 9 Morrison Mining Reports 364, *Gould v. Wise*, 18 Nev. 253, 3 Pac. 30; *Davis v. Mial*, 86 N. J. Law 167, 90 Atl. 315; *West Jersey & S. S. R. Co. v. County of Cape May*, 100 N. J. Eq. 181, 135 Atl. 74; *Standard Acc. Ins. Co. v. United States*, 58 S. Ct. 314, 302 U. S. 442.

The second distinction is that class (a) provides only for persons who perform labor *upon* while class (d) provides for persons who do work *for*. Respondents argue under their Point I (b) that there is no significance in the fact that the Legislature used different words. This ignores the fact that as a matter of common usage these words have very different meanings. Webster's New Collegiate Dictionary defines "upon" as meaning "on; in all senses;" "on" is defined as "indicating position of contact with or against a supporting surface" while "for" is defined as "indicating that in consideration of which, in view of which, or with reference to which, anything is, is done, or takes

place.” As used in the mechanics’ lien statute, upon has a much more restricted meaning than for. That the Legislature recognized this difference is evidenced by the manner in which they used the two words in Section 3731 of the Compiled Laws of 1917. This section provided in part as follows:

“3731. (1381.) Liens on mines. The provisions of this chapter shall apply to *all persons who shall do work* or furnish materials *for* the working, preservation, or development of any mine, lode, mining claim, or deposit yielding metals or minerals of any kind, or *for* the working, preservation, or development of any such mine, lode, or deposit in search of such metals or minerals, and to *all persons who shall do work or furnish materials upon* any shaft, tunnel, incline, adit, drain, or other excavation of any such mine, lode, or deposit; * * *

It would appear clear from the underlined portions of the above cited statute that the Legislature recognized the difference in the meaning of the words and that the classification where it used “for” is broader than the one where it used “upon.” Although the latter class of persons might be restricted to recovering for work performed when they were actually upon the subject premises, under no stretch of the imagination could it be said that Legislature intended to place such a restriction upon those in the first class.

The words “oil or gas well” were added to the provision providing for persons connected with the mining industry and the words “or concerning” were added to the provision describing property which could be attached at the time of the 1933 revision. After the revision, the latter provision provided that persons entitled to liens “shall

have a lien upon the property upon or *concerning* which they have rendered service, performed labor or furnished materials * * *” Respondents argue on page 11 of their brief that since “there is nothing in the revised statute to limit the applicability of the word ‘concerning’ to persons doing work for the development of an oil and gas well” that the word “concerning” had no significance so far as such persons are concerned. Then on page 15 they state that the word “concerning” applies only to the services performed by architects and engineers even though there is nothing in the statute to so limit its applicability to that class. Prior to the 1933 revision Section 3722 of the Compiled Laws of 1917 gave engineers and architects liens “upon the property upon which they rendered services, etc.” Nothing was said about the property “concerning” which they rendered service. The language of Section 3722 as related to architects and engineers was included almost verbatim in the revised statute. There is absolutely nothing to connect the word “concerning” to architects and engineers. The fact that the provision describing property which could be attached was extended at the same time that the provision describing persons entitled to liens was enlarged to cover persons who do work for the development of any oil or gas well would indicate that the Legislature intended that the former should apply to the latter in the absence of any other reason being shown for adding the word “concerning.” Any other construction would render the word meaningless.

Respondents argue on page 12 of their brief that if appellant’s argument regarding the significance of the word “concerning” is correct then the work performed by *all* persons named in the statute need only “concern” the

property, and not be performed upon or for such property. That such an argument is erroneous is indicated by the definition of the persons entitled to liens in class (a). There the Legislature has limited by definition the persons entitled to liens to those "performing labor upon." These persons are provided for in the provision setting forth the property which can be attached in the same manner in which they were treated prior to the 1933 revision, to wit: "shall have a lien upon the property upon which they have rendered service or performed labor." If the Court finds that the Legislature intended by the use of the word "concerning" to describe the property which those persons in class (d) could attach, it does not follow that it must also apply to the property which the persons in class (a) can attach.

We submit that the legislative history and wording of the statute show that the Legislature intended to give a broader coverage to the persons in class (d) than those in the other classes and that it did not intend to restrict them to having liens only for the value of work which was performed upon the subject property.

POINT II.

THE CONTRACT BETWEEN DAVIS AND THE DRILLER COVERED THE COST OF TRANS- PORTATION.

The circumstances surrounding the making of the contract between Davis and the driller and the contract itself show clearly that the parties considered the cost of transporting the drilling equipment to the well site at the time they entered into the contract. They expressly provided in

the contract for the manner in which this cost would be paid and who was to have the responsibility for obtaining the necessary equipment for the transportation.

The well site was located in an isolated area in southeastern Utah. It was necessary to travel over 42 miles of unimproved roads and ford the San Juan River in order to reach it (R. 79). Both parties knew that in order to move the drilling equipment to the well site it would be necessary to obtain specialized cranes and trucks (R. 78). It is unreasonable to believe that they did not consider the cost of transporting the drilling equipment when they arrived at the price which Davis was to pay the driller.

Schedule "A" of the contract (see plaintiff's exhibit No. 37) describes the equipment and services needed to drill the well and indicates who is to be responsible for furnishing them. Paragraph E covers special services and equipment and under item 9 is shown cranes and trucks for moving in and rigging up. The driller was designated as the person responsible for obtaining the cranes and trucks. Respondents argue on page 18 of their brief that this means merely the equipment necessary to move the equipment onto the well site. There is nothing in the contract which imposes such a restriction and in view of the location of the well it would seem to be much more reasonable to assume that it referred to the trucks and cranes which both parties knew would have to be obtained in order to transport the equipment.

Respondents argue that the distance that the driller had to transport the rig had no bearing whatsoever upon what Davis agreed to pay for drilling the well. (See page

17 of their brief.) Again respondents ignore the practical factors surrounding the making of the contract. Although Davis may not have known where the drilling rig was located, there can be no question that the driller knew exactly where it was and how much it would cost to transport the rig to the Davis well site. To argue that this was not a factor which the driller considered in determining the contract price is to totally ignore realities.

Schedule "B" of the contract sets forth the manner in which the driller was to be paid for the work which was performed (plaintiff's exhibit No. 37). The driller and Davis agreed in paragraph 4 (d) of the contract that driller would receive the sum of \$8.25 for each lineal foot of hole drilled. Items 1 and 47 of Schedule "B" provide that the only reimbursement that driller was to receive for costs of moving his equipment in and out was the footage rates. It is therefore impossible to believe that both parties did not consider the cost of transporting the drilling equipment to the well site in arriving at what the footage rate should be. The fact that they expressly provided that the cost of moving in was to be paid on a footage basis indicates that they considered the cost of transportation in determining what the footage rate should be. Any other assumption would not be reasonable.

POINT III.

TRANSPORTATION IS A LIENABLE ITEM UNDER MECHANICS' LIEN STATUTES.

The question before this Court is whether the work done by Stanton was work for the development of an oil

well within the meaning of the Utah statute. We have found no other statute that gives such broad coverage to persons who do work connected with oil wells and respondents have cited none in their brief. The language of the various mechanics' liens statutes varies considerably. It is therefore not surprising that the courts have arrived at different results in determining whether transportation is a lienable under their particular statute. It is significant, however, that many courts have allowed a lien for the cost of transporting machinery and other items under statutes that are much more restrictive than the Utah statute.

There are only two jurisdictions, Texas and Oklahoma, that have directly considered the question of whether charges for the transportation of drilling equipment to a well site are lienable. The Texas courts held that it was not while the Oklahoma courts held that it was. Respondents on page 19 of their brief cite the Texas case of *Gray v. Magdalena Oil Company*, 240 S. W. 693, as authority for the proposition that charges for transportation are not lienable. The Texas court in holding that transportation of drilling equipment was not lienable considered Section 5621, Revised Civil Statutes of Texas which provides liens, in the words of the court, for "the person who labors or furnishes material, etc., to erect any house or improvement, etc., shall have a lien on such house * * *" On motion for rehearing the court cursorily stated that no lien existed under Section 5621. Section 5621 provided in part that "any person * * * who shall * * * perform labor or furnish material * * * used in digging, drilling, torpedoing, separating, completing, maintaining or repairing any

such oil or gas well * * * shall have a lien * * *” (Emphasis added.) That this language is much more restrictive than that used in the Utah statute is clear. The Texas statute restricts its application to persons who perform labor in certain specified operations connected with the drilling of oil wells, all of which occur after the equipment is on the well site and drilling is commenced. The Utah statute which provides for those persons who do work for the development of oil wells is not nearly so restrictive. The Texas court gave no reason for its holding other than to state that no lien existed under either statute.

The Oklahoma Supreme Court in *Cleveland v. Hightower*, 108 Okla. 84, 234 Pac. 614, construed Section 7466, C. O. S. 1921. This statute had almost exactly the same wording as the statute considered by the Texas court in the *Gray* case but the courts construed different provisions. The Oklahoma court held that one who transports casing to a well site is entitled to a lien against the leasehold. The court reached this result even though the statute limited the persons entitled to liens to those who “perform labor.” The Utah statute which gives liens to persons who “do work for” is much broader. The other Oklahoma cases cited on page 16 of appellant’s brief have adopted the same reasoning. We submit that the holding and reasoning of the Oklahoma courts as indicated on pages 15 and 16 is much more in accord with the objects of the Utah statute than is the result of the Texas case.

The gist of respondents’ argument on pages 22 and 23 of their brief seems to be that Stanton should not be entitled to a mechanics’ lien because it is a common carrier. The

simple answer to this argument is that the Utah statute provides for *any person* who shall do work for the development of an oil well and does not provide for any person *except common carriers*. Respondents argue on page 22 that the court in *Cashman v. Russell*, 33 Ariz. 451, 265 Pac. 606, excluded common carriers by distinguishing *Santa Fe P. & P. Ry. Co. v. Arizona Smelting Co.*, 13 Ariz. 95, 108 Pac. 256, and by citing *Union Traction Co. v. Kansas Casualty & Surety Co.*, 112 Kan. 774, 213 Pac. 169. The *Cashman* case was cited by appellant to show the reasoning of the courts in holding that the cost of transporting machinery is lienable. Admittedly, it did pass on the question of whether a common carrier would be entitled to a lien but neither did it hold that common carriers should not be entitled to liens. The *Santa Fe* case referred to held that a common carrier is not entitled to a lien for freight charges for transportation under a statute which provided that:

“All foundrymen, boiler makers, and all persons who labor or furnish machinery, boilers, castings, or other material for the construction, alteration, repairs, or carrying on of any mill, manufactory, or hoisting works at the request of the owner thereof, or his agent, shall have a lien on the same for the amount due him or them therefor.”

This is certainly not authority for the general proposition that common carriers should not be entitled to liens. In fact the court in the *Santa Fe* case specifically stated that it did not think “that the fact that a railroad company may have lien (common carriers) for freight would operate to prevent its claiming a lien (mechanics) under this statute if the language of the statute permits. We have to deter-

mine, if we can, from the language of the statute and the conditions existing at time of its passage, the intent of the Legislature.” (Material in parenthesis added.) Likewise, the other cases cited by respondents as authority for this proposition all turn on the construction of statutes containing language much more restrictive than that used in the Utah statute. None of them indicate that where the language of the statute is broad enough to include common carriers as in the case of the Utah statute they should be excluded. In addition, many cases have expressly held that common carriers are entitled to liens under mechanic lien and similar statutes. See *West Jersey & S. S. R. Co. v. County of Cape May*, 100 N. J. Eq. 181, 135 Atl. 74; *State v. Aetna Casualty & Surety Co.*, 34 Del. 158, 145 Atl. 172; *Sommers Const. Co. v. Atlantic Coast Line R. Co.*, 62 Ga. 23, 7 S. E. 2d 429; *Standard Acc. Ins. Co. v. U. S.*, 58 S. Ct. 314, 302 U. S. 442.

Appellant cited a number of cases on pages 18 through 19 of its brief where the courts have held that transportation is lienable. We admit that many of these cases can be distinguished from the case now before the court but feel that it is significant that courts on numerous occasions have recognized transportation as a lienable item on one theory or another under statutes with much more restrictive language than that used in the Utah statute. It is recognized that due to the different wording in the various lien statutes the decisions as to whether transportation is lienable are not all in accord. However, even a cursory reading of the cases cited by respondents as authority for the proposition that transportation is not lienable shows that in every

case the language of the statute construed was much more restrictive than that in the Utah statute. While no cases have been cited where it has been held that transportation is not lienable under statutes as broad as the Utah statute, numerous cases have held that it is lienable under much more restricted statutes.

The Utah Legislature has since 1890 recognized the principle that the property owner who is enriched as a result of the labor or work of another should be the one primarily responsible for seeing that those who makes his enrichment possible are paid. Recognizing that the owner is in the best position to determine whether those he contracts with are financially responsible, it has required him to obtain a bond from the contractor in order to protect such persons or run the risk of being held personally responsible. Section 14-2-1, U. C. A., 1953. Davis failed to obtain such a bond in the instant case. To hold that Stanton is not entitled to a lien under the circumstances of this case would require a complete disregard of the clear and unambiguous language of the statute and would be contrary to the objects and purposes sought by the Legislature.

CONCLUSION

We submit that the trial court was in error in holding that Stanton was not entitled to a lien for the work it performed under the Utah statute and that there is nothing in respondents' brief which alters this conclusion.

Respectfully submitted,

STERLING D. COLTON,

For Van Cott, Bagley,
Cornwall & McCarthy,

ALVIN J. MEIKLEJOHN, JR.,

*Attorneys for Plaintiff
and Appellant.*