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CHAPTER 603

**BUILDINGS, LOTS, WHARVES AND PIERS;
LABOR AND MATERIALS**

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§ 3251. Lien established

Whoever performs labor or furnishes labor or materials or performs services either as an architect or an engineer in erecting, altering, moving or repairing a house, building or appurtenances, including any public building erected or owned by any city, town, county, school district or other municipal corporation, or in constructing, altering or repairing a wharf or pier, or any building thereon, by virtue of a contract with or by consent of the owner, has a lien thereon and on the land on which it stands and on any interest such owner has in the same, to secure payment thereof, with costs. If the owner of the building has no legal interest in the land on which the building is erected or to which it is moved, the lien attaches to the building, and if the owner of the wharf or pier has no legal interest in the land on which the wharf or pier is erected, the lien attaches to the wharf or pier, and in either case may be enforced as provided. If the owner of such land, building, wharf or pier, so contracting, is a minor or married woman, such lien shall exist and such minority or coverture shall not bar a recovery in any proceeding brought to enforce it.

R.S.1954, c. 178, § 34.

§ 3252. Prevention of lien

If the labor, materials or services were not furnished by a contract with the owner of the property affected, the owner may prevent such lien for labor, materials or services not then performed or furnished, by giving written notice to the person performing or furnishing the same that he will not be responsible therefor.

R.S.1954, c. 178, § 35.

§ 3253. Dissolution unless claim filed

The lien mentioned in section 3252 shall be dissolved, unless the claimant, within 60 days after he ceases to labor, furnish materials or perform services, files in the office of the register of deeds in the county or registry district in which such building, wharf or pier is situated a true statement of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate to identify it, and the names of the owners, if known; which shall be subscribed and sworn to by the person claiming the lien, or by someone in his behalf, and recorded in a book kept for that purpose by the register of deeds for said county or registry district, who is entitled to the same fees therefor as for recording mortgages. This section shall not apply where the labor, materials or services are furnished by a contract with the owner of the property affected.

R.S.1954, c. 178, § 36.

§ 3254. Inaccuracy does not void lien if reasonably certain

No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor, materials or services invalidates the proceedings, unless it appears that the person making it willfully claims more than his due.

R.S.1954, c. 178, § 37.

§ 3255. Liens preserved and enforced by action

The liens mentioned in sections 3251 to 3254 may be preserved and enforced by action against the debtor and owner of the property affected and all other parties interested therein, filed with the clerk of courts in the county where the house, building or appurtenances, wharf, pier or building thereon, on which a

lien is claimed, is situated, within 90 days after the last of the labor or services are performed or labor, materials or services are so furnished, and not afterwards, except as provided in section 3256.

R.S.1954, c. 178, § 38; 1959, c. 317, § 391.

§ 3256. Extension of lien

When the owner dies, is adjudicated a bankrupt or a warrant in insolvency issues against his estate within the 90 days and before the commencement of an action, the action may be commenced within 60 days after such adjudication, or after notice given of the election or appointment of the assignee in insolvency, executor or administrator, or the revocation of the warrant. The lien shall be extended accordingly.

R.S.1954, c. 178, § 39; 1959, c. 317, § 392.

§ 3257. Allegations of complaint; joinder of parties

The complaint shall state that the plaintiff claims a lien on the house, building or appurtenances, or on the wharf, pier or building thereon, as the case may be, described therein, and the land on which it stands, for labor or services performed or for labor, materials or services furnished, in erecting, altering, moving or repairing said house, building or appurtenances, or in constructing, altering or repairing said wharf, pier or building thereon, as the case may be; whether it was by virtue of a contract with or by consent of the owner, and if not, that the claimant has complied with section 3253. The complaint shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a complaint. Other lienors may be made parties. Other lienors may become parties and preserve and enforce their liens on said property, provided their complaints therefor, setting forth their claims in substance as required in a complaint be filed with the clerk within 90 days after the last labor or services are performed or the last labor, materials or services are furnished by them or within the additional time prescribed in section 3256. The court may consolidate 2 or more actions claiming liens on the same property into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in, said property may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding.

R.S.1954, c. 178, § 40; 1959, c. 317, § 393.

§ 3258. Determination of amount; jury trial

The court shall determine the amount for which each lienor has a lien upon the property by jury trial, if either party so requests in complaint or answer; otherwise in such manner as the court shall direct. Such determination shall be conclusive as to the fact and amount of the lien, subject to appeal as in other actions. Any lienor may contest another lienor's claim upon issues framed under direction of the court.

R.S.1954, c. 178, § 41; 1959, c. 317, § 394.

§ 3259. Sale of property; redemption; pro rata shares

If it is determined that the parties or any of them, claiming a lien, have a lien upon said building and land or upon said wharf, pier, building and land, the court may decree that said property, or such interest in it as is subject to the liens or any of them, shall be sold, and shall prescribe the place, time, terms, manner and conditions of such sale. The court may order an adjournment of such sale from time to time, or the manner and conditions of any adjournment of such sale may be prescribed in the decree. A deed of the officer of the court, appointed to make such sale, recorded in the registry of deeds where the land lies, within 3 months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court may provide in the order of sale that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The lienors shall share pro rata, provided their complaints or motions therefor are filed with the clerk of courts prior to the order of sale and within the time mentioned in sections 3255, 3256 and 3257. The court may make such decree in regard to costs as is equitable.

R.S.1954, c. 178, § 42; 1961, c. 317, § 606.

§ 3260. Deficiency; judgment for balance

If the proceeds of the sale after payment of costs and expenses of sale are insufficient to pay the lien claims and costs in full, the court may render judgment against the debtor in favor of each individual lienor for the balance of his claim and costs remaining unpaid, and may issue executions therefor. If the proceeds of sale, after the payment of costs and expenses of sale, are

more than sufficient to pay the lien claims and all costs in full, the balance remaining shall be paid to the person or persons legally or equitably entitled thereto.

R.S.1954, c. 178, § 43.

§ 3261. Certificate to be filed with register of deeds

When any complaint provided for in chapters 601 to 631 in which a lien is claimed on real estate is filed with the clerk, he shall forthwith file a certificate, setting forth the names of the parties, the date of the complaint and of the filing thereof, and a description of the said real estate as described in said complaint, in the registry of deeds for the county or district in which the land is situated.

R.S.1954, c. 178, § 44; 1959, c. 317, § 395.

§ 3262. Enforcement by attachment

In addition to the remedy provided, the liens mentioned in sections 3251 to 3254 may be enforced by attachment in actions commenced in any court having jurisdiction in the county where the property on which a lien is claimed is situated, which attachment shall be made within 90 days after the last of the labor or services are performed, or labor, materials or services are furnished, and not afterwards, except as provided in section 3256.

R.S.1954, c. 178, § 45; 1959, c. 317, § 396.

§ 3263. Petition for release

Any owner of a building, wharf, pier or real estate upon which a lien is claimed may petition in writing a Justice of the Superior Court setting forth the name of the lienor, the court and county in which the action is pending, the fact that a lien is claimed thereon under sections 3251 to 3254, the particular building, wharf, pier or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice which shall be served on the lienor or his attorney 10 days at least prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor in such amount and with such sureties as he may approve, conditioned to pay the amount for which such lienor may be entitled to a lien as determined by the court, with his costs in the action, within 30 days after final decree or judgment. The clerk shall give the plaintiff an attested copy of the complaint and

proceedings, with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office. The record of such copy and certificate in the registry of deeds, in the county or district where such real estate or interest therein lies, vacates the lien.

R.S.1954, c. 178, § 46; 1959, c. 317, § 397.

§ 3264. Consolidation of actions

When 2 or more proceedings are pending at the same time, in whatever court or courts, to enforce liens on the same house, building or appurtenances, wharf, pier and building thereon, upon complaint of any lienor who has commenced such proceedings, or of the owner of the building, wharf or pier, a Justice of the Superior Court after notice and hearing may, if justice requires it, order all such actions to be transferred to the Superior Court and require the parties in all such proceedings, in whatever court commenced, to plead substantially in the manner prescribed in section 3257, and thereafter all the proceedings shall be in accordance with said section and sections 3265, 3451, 3452, 3501 and 3601. While such complaint is pending all such actions shall stand continued.

R.S.1954, c. 178, § 47; 1959, c. 317, § 398.

§ 3265. Sale on execution; several judgments; redemption

When a judgment is rendered in any action authorized by chapters 601 to 631 against any house, building or appurtenances, wharf, pier or building thereon, and the land on which it stands, or any interest that the owner of such house, building or appurtenances, wharf or pier has in such land, said property shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If 2 or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and in the event that the officer holding any execution recovered under chapters 601 to 631 shall be notified in writing by any lienor who has caused said property to be attached or who has filed his action claiming a lien as provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments and all lienors so notifying such officer otherwise direct, shall thereupon sell said property and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which

any such lien action is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made may fix the time within which the owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall be paid to the person or persons legally or equitably entitled thereto.

R.S.1954, c. 178, § 48; 1959, c. 317, § 399; 1961, c. 317, § 607.