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Liens—Contractors and Materialmen—Married Women's Property—Husband's Power to Charge

As a general rule there can be no contractor's or laborer's lien upon property unless the materials had been furnished and work and labor had been done under a contract with the owner, either express or implied.¹ Since the lien is statutory,² and since the statute provides that the lien was "for the payment of debts contracted" for work done or material furnished, the North Carolina courts have found it easy to hold that no lien can be created unless there is a contract with the owner.³

Applying this statute and the above rule, the court held in an early case that a contractor could not get a lien on a married woman's property for work done or material furnished under a contract with the husband. The court suggested that the law should be otherwise, but that it was not within the power of the court to change it.⁴ Following this decision and probably as a result of the court's suggestion, the General Assembly in 1901 amended the lien law so as to give a contractor a lien on a married woman's property when it appeared that a building was built or repaired thereon with her consent or procurement, and in such cases she was deemed to have contracted for such improvements.⁵ There is no doubt that the statute prevented fraud and injustice upon laborers and materialmen. The husband could improve the wife's property and he could enjoy it without any possibility of losing the improvements if he did not pay for them. Before the enactment of the statute, the wife's property could be greatly enhanced in value and she could enjoy these benefits at the expense of the materialman.

While this statute remained on the books, the Supreme Court recognized in a number of cases that the lands of a married woman

¹ *Brown v. Ward*, 221 N. C. 344, 20 S. E. 2d 324 (1942); *Boykin v. Logan*, 203 N. C. 196, 165 S. E. 680 (1932); *Honeycutt v. Kenilworth Development Co.*, 199 N. C. 373, 154 S. E. 628 (1930); *Charlotte Foundry Co. v. Southern Aluminum Co.*, 172 N. C. 704, 90 S. E. 923 (1916); *Weathers v. Cox*, 159 N. C. 575, 76 S. E. 7 (1912); *Weathers v. Borders*, 124 N. C. 610, 32 S. E. 881 (1899); *Boone v. Chatfield*, 118 N. C. 916, 24 S. E. 745 (1896).

² N. C. GEN. STAT. §44-1 (1943). See also *Honeycutt v. Kenilworth Development Co.*, 199 N. C. 373, 154 S. E. 628 (1930).

³ *Honeycutt v. Kenilworth Development Co.*, 199 N. C. 373, 154 S. E. 628 (1930); *N. C. Lumber Co. v. Spear Motor Co.*, 192 N. C. 377, 135 S. E. 115 (1926); *Rose v. Davis*, 188 N. C. 355, 124 S. E. 576 (1924); *Nicholson v. Nichols*, 115 N. C. 200, 20 S. E. 294 (1894).

⁴ *Weir v. Page*, 109 N. C. 220, 13 S. E. 773 (1891).

⁵ This section [N. C. GEN. STAT. §44-1] shall apply to the property of a married woman when it shall appear that such building was built or repaired on her land with her consent or procurement, and in such cases she shall be deemed to have contracted for such improvements. N. C. CODE ANN. (Michie, 1939) §2434.

who knew that her husband was making improvements thereon might be subjected to a laborer's or materialman's lien when the circumstances surrounding the transaction indicated that she consented to or procured the work to be done.⁶ But, in 1943 when the General Statutes were enacted, this amendment to the lien law which made the property of a married woman subject to a lien was dropped as being obsolete in view of the subsequent enactment of the Martin Act,⁷ which gave the married woman full power to contract;⁸ but there seems to be no logical reason why the Martin Act made the amendment of 1901 obsolete. It must be remembered that the amendment to the lien law was enacted at a time when married women were under many legal disabilities and their power to contract was limited in that she could make no contract to affect her real estate without the consent of her husband.⁹ The amendment made the married woman's property subject to a lien as if she had contracted in order to satisfy the requirement that there must be a debt from the owner of the property before there can be a lien.¹⁰ This covers the situation where the woman did not contract for the improvements but some one else did for her. This seems to be entirely different from the provision in the Martin Act which gives the married woman herself the power to contract for labor or materials and to deal with her property as if she were unmarried. It must also be remembered that in 1901 a married woman could contract and deal with her real property—the only requirement being that she had to get the consent of her husband;¹¹ thus there seems to be no overlap with the 1901 amendment. It is believed, therefore, that an error was made by dropping the amendment to the lien statute and as a result uncertainty as to the present law has arisen and some lienors have been caught unaware of the change by this backhanded method of repeal.

⁶ *Rose v. Davis*, 188 N. C. 355, 124 S. E. 576 (1924); *Finch v. Cecil*, 170 N. C. 72, 86 S. E. 992 (1915); *Kearney v. Vann*, 154 N. C. 311, 70 S. E. 747 (1911); *Payne v. Flack*, 152 N. C. 600, 68 S. E. 16 (1910); *Finger v. Hunter*, 130 N. C. 529, 41 S. E. 890 (1902).

⁷ N. C. GEN. STAT. §44-1 (1943). "N. C. CODE ANN. (Michie, 1939) §2434—Deleted as obsolete. The Martin Act, enacted in 1911 (N. C. CODE ANN. §2507), enables a married woman 'to contract and deal so as to affect her real and personal property in the same manner and with the same effect as if she were unmarried.' In view of this, §2434 is now unnecessary." Explanatory Report of Committee on Recodification.

⁸ A married woman is authorized to contract and deal so as to affect her real and personal property in the same manner and with the same effect as if she were unmarried. N. C. GEN. STAT. §52-2 (1943).

⁹ *State v. Robinson*, 143 N. C. 620, 56 S. E. 918 (1907); *Ball v. Paquin*, 140 N. C. 83, 52 S. E. 410 (1905); *Finger v. Hunter*, 130 N. C. 529, 41 S. E. 890 (1902); *Weathers v. Borden*, 124 N. C. 610, 32 S. E. 881 (1899); *Pippen v. Wesson*, 74 N. C. 437 (1876).

¹⁰ *Kearney v. Mann*, 154 N. C. 311, 70 S. E. 747 (1911).

¹¹ N. C. Laws 1871-2, c. 193, §17. See also *Pippen v. Wesson*, 74 N. C. 437 (1876).

At any rate, since the amendment of 1901 was dropped from the 1943 General Statutes, it appears that in regard to liens on her land for labor and materials, she now stands on the same footing as any other person. No other land owner has his land subjected to a lien for labor or materials used unless he has contracted for them or has authorized an agent to do so for him.¹² In a recent case the court held that "in order to create a lien in favor of a person who builds a house on the land of another the circumstances must be such as to first create the relationship of debtor and creditor."¹³ Mere knowledge that work is being done or material furnished does not enable a person furnishing the labor or material to obtain a lien.¹⁴ Not even the land of a lessor is subject to a lien for improvements made by the laborer or materialman of the lessee when there is no evidence that the lessor contracted to be obligated.¹⁵ In a recent case the court said that if the creditors were unwilling to do the work and furnish the material upon the credit of the debtor and intended to look to the security provided by statute, ordinary prudence requires them to ascertain the status of the title to the land upon which the building was to be erected and obtain the approval or procurement of the owners.¹⁶ From these clearly established principles of lien law, and since the statute which provided that a married woman was deemed to have contracted for the improvements is no longer a part of our law, it seems that the separate estate of the wife cannot be subjected to a lien for improvements placed thereon by her husband unless she contracted with the husband constituting him a sub-contractor or else made him her agent. If the present interpretation of the lien statute is not extended it is difficult to see how a laborer or materialman can get a lien on a married woman's property when he contracted with the husband. Since the lien statutes are for the primary protection of laborers and materialmen, in view of the sound reasons for the enactment of the earlier statute, and to avoid further confusion, it is suggested that the amendment of 1901 be again made a part of our lien law.

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¹² *Brown v. Ward*, 221 N. C. 344, 20 S. E. 2d 324 (1942); *Honeycutt v. Kenilworth Development Co.*, 199 N. C. 373, 154 S. E. 628 (1930). See also cases cited in note 1 and 2 *supra*.

¹³ *Brown v. Ward*, 221 N. C. 344, 246, 20 S. E. 2d 324, 326 (1942).

¹⁴ *Brown v. Ward*, 221 N. C. 344, 20 S. E. 2d 324 (1942).

¹⁵ *Brown v. Ward*, 221 N. C. 344, 20 S. E. 2d 324 (1942); *Critchler v. Watson*, 146 N. C. 150, 59 S. E. 544 (1907); *Bailey v. Rutjes*, 86 N. C. 517 (1882).

¹⁶ *Brown v. Ward*, 221 N. C. 344, 20 S. E. 2d 324 (1942).