

The State of South Carolina



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The Honorable Thomas C. Alexander
Senator, District No. 1
606 Gressette Building
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Dear Senator Alexander:

You have asked our opinion concerning the interpretation of Section 29-15-70 Code of Laws of South Carolina (1976 as amended) regarding attachment of a textile processor's lien to property, other than textiles, in the possession of a textile processor, and the priority of such a lien.

I emphasize at the outset that, in the exercise of the quasi-judicial opinion writing function, the Office of Attorney General does not investigate or resolve disputed factual issues. This Office must assume the accuracy of the facts presented to us. See, Op. Atty. Gen., December 9, 1983.

FACTS AS PRESENTED

The facts that are presented and which we assume are these: a textile processor (the "Processor") has in its possession certain screens and patterns that are property of its account debtor (the "Debtor"). Patterns are pieces of paper that contain color drawings of the pattern that is to be imprinted on the fabric. The pattern is transferred on to a series of screens, which are steel plates with microscopic perforations where the dye should be imprinted on the fabric. The patterns were supplied by the Debtor, and the screens were made by the Processor. The Debtor is indebted to the Processor for the Processor's printing of fabric for the Debtor. The Processor holds at its facility in South Carolina the screens and patterns and some fabric. The Debtor has granted a bank (the "Bank") a prepetition security interest in all the Debtor's property, including the patterns, screens, and fabric in the Processor's possession, and this security interest was properly

perfected before the Processor came into possession of the Debtor's patterns, screens and fabric on which it now asserts a lien.

LAW/ANALYSIS

Section 29-15-70 grants a lien to textile processors as follows:

A lien on account of work, labor and materials furnished in manufacturing, finishing, bleaching, mercerizing, dyeing and printing or otherwise processing natural or man-made fibers or goods of which natural or man-made fibers form a component part, as against goods in the lienor's possession, shall extend to any unpaid balance of account for work, labor and materials furnished in the course of any such process in respect of any other such goods of the same owner whereof the lienor's possession has terminated.

By the statute's terms, the Processor receives as replacement for those goods which have been released to the Debtor, a lien for any unpaid balance of account for work, labor and materials furnished "as against goods in the lienor's possession." Unquestionably, the statute impresses a lien upon the fabric in the Lienor's possession. The novel question thus presented is whether the patterns and screens described above, are also included within the term "goods" as used in the relevant statutory phrase "goods in the lienor's possession."

It is well recognized that statutes creating liens that are regarded as in derogation of the common law are strictly construed. However, a lien statute that is remedial is so construed to give full force and effect to the remedy, in view of the beneficial purposes contemplated. 51 Am.Jur.2d, Liens, § 38; see also, 53 C.J.S., Liens, § 2; Clo-CAR Trucking Co. Inc. v. Cliffure Estates of S.C. Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984) [mechanics lien statute is remedial and thus liberally construed].

It is evident that Section 29-15-70 was designed to make the Processor whole for the "work, labor and materials furnished" in such process. First enacted in 1928, the Act had as its title, "An Act to Provide For a Lien of Bleachers and Others to Secure Charges For Work, Labor and Materials In Respect to Certain Goods." (emphasis added). Act No. 600 of 1928. The statute itself, like the title, makes specific mention that the lien extended is a replacement for "goods of the same owner where of the lienor's possession has terminated." Moreover, the lien reaches broadly, extending "to any unpaid balance of account for work, labor and materials furnished in the course of any such process." Thus, we believe that a court would construe Section 29-15-70 broadly, to achieve the

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remedial purpose of securing a lien to replace those goods which have already been released to the Debtor and have left Processor's possession.

The statute expressly extends the lien to "goods in the lienor's possession." There is no limitation or qualification placed upon the word "goods". The Legislature could easily have limited the term "goods" to the specific "goods" which the Processor had processed, i.e. the fabric, but it did not. Typically, such words of limitation are the norm. See, e.g. Dominique v. Hural, 261 So.2d 88, 91 (La. 1972) (citing Louisiana law, e.g. granting a lien "on the thing for the debt due him for materials furnished or labor performed.") See also, Sections 29-13-10 (lien on all crops); 29-15-20 (lien on motor vehicle for damages); 29-15-100 (lien on aircraft). Compare, Section 29-15-30 (lien "upon such railroad and upon all the interests of such owner or person as aforesaid in such railroad"). When the Legislature has chosen to limit the scope of a lien to specific articles or items, it has done so, but where it has not, we must presume that no such intent was had. See, Pa. Nat. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984) [rule of "expressio unius est exclusio alterius"].

Here, we might speculate that the Legislature's intent was to place the statutory lien only on the fabric processed. See Act No. 78 of 1969, amending Section 29-15-70, entitled "An Act to Amend Section 45-555 of the 1962 Code [now Section 29-15-70], Relating To The General Lien on Textiles ..." (emphasis added). Moreover, it could be argued that the word "goods," as contained in the phrase "as against goods in the lienor's possession," is defined by the context in which the word "goods" is used immediately preceding ("... goods of which natural or man-made fibers form a component part"), thereby limiting the term "goods" to processed fabric. But where the statute expressly covers "goods in the lienor's possession," with no qualification whatever,¹ we cannot speculate that the Legislature impliedly limited the scope of the lien in this manner, particularly, where it is more likely that the phrase "goods of which natural or man-made fibers form a component part" is merely a catchall phrase rather than any attempt to define the word "goods" substantively. A court will not read into an enactment something not within the manifest intention of the Legislature as gathered from the statute itself. Laird v. National Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964).

¹ Arguably, if the Legislature had intended the statute's second reference to "goods" to be limited only to fabric, it would have used the term "such goods" as was done later in the statute. Use of "such goods" in the second reference to "goods" would have then limited the second reference to the meaning employed in the antecedent reference, thus clearly limiting the second reference to textiles. But the Legislature did not do this.

Moreover, the word "goods" is itself a particularly broad term. See, 38 C.J.S., "Goods". The term is generally deemed "to enhance every species of property which is not real estate or freehold." Id. As stated in In re Tele-Tone Radio Corp., 133 F.Supp. 739, 746 (D. N. J. 1955), interpreting a New Jersey statute granting a lien to factors on "all goods," the court said that the term "goods" should be interpreted to include "all personal chattels other than things in action and money." See also, Putnam v. Triangle Publications Inc., 245 N.C. 432, 96 S.E.2d 445, 453 (1957). Moreover, South Carolina Code Section 36-9-105 defines "goods" as including "all things which are movable at the time the security interest attaches"

Thus, in view of the fact that the Legislature did not limit the term "goods" as used in Section 29-15-70 granting a lien to Processors as against "goods in the lienor's possession" and, in view of the fact that we believe a court would construe the statute broadly to effectuate a remedial purpose, it is our opinion that Section 29-15-70 grants a textile processor's lien on all the patterns and screens, in addition to the fabric in the possession of the Processor. Clearly, the screens and patterns are an integral part of the processing procedure. Without them, there could be no processing. Therefore, so long as such screens and patterns remain in the Processor's possession, we believe they are encompassed within the phrase "goods in the lienor's possession" and thus subject to the Section 29-15-70 lien.

PRIORITY OF TEXTILE PROCESSOR'S LIEN

Priority of a Processor's lien is established by statute. Section 36-9-310, which is the codification of Section 9-310 of the Uniform Commercial Code provides as follows:

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a protected security interest unless the lien is statutory and the statute expressly provides otherwise.

We assume, based upon the facts presented that the Processor's services which give rise to the processor's lien are in the ordinary course of the Processor's business. The various statutes discussed above (including Section 29-15-70) make no mention whatever regarding priority of the Processor's lien. The Official Comment to Section 36-9-310 (of the U.C.C.) notes that the Section is intended to change decisions prior to its enactment which may have held that, in the absence of a statutory statement of priority, such liens

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are junior to a prior perfected security interest.² Thus, it is our opinion that Section 36-9-

² In Powers v. Fidelity & Deposit Co. of Maryland, _____ S.C. _____, 186 S.E. 523, 527 (1936), our Supreme Court concluded that all liens ranked in order of acquisition. Moreover, this Office in an opinion predating enactment of Section 36-9-310, and consistent with Powers, that a mechanic's lien (Section 29-15-10) is not superior to a prior, recorded chattel mortgage. 1963-64 Op. Atty. Gen., No. 1764, p. 277, and No. 1773, p. 290.

However, the Official Comment to U.C.C. Section 9-310 indicates that the effect of Section 36-9-310 is to overrule legislatively the holding of Powers and subsequent opinions of this Office which are in accord with Powers. The South Carolina Reporter's Comments to Section 36-9-310 echo this conclusion with respect to a textile processor's lien:

... The following sections are silent as to priority and, therefore, the rule of Commercial Code 9-311 would also accord priority to the statutory lien:

....

South Carolina Code Section 45-555 (Section 29-15-70 as then codified) - to persons who perform work on textiles for the charges for such labor on the textiles.

....

South Carolina Code Section 45-550 (section 29-15-10 as then codified) grants a lien to garagemen and mechanics for repair or storage charges on goods. The statute is silent on the priority question but the case of Nesbitt Auto Co. v. Whitlock, 113 S.C. 519, 101 S.E. 822 (1920) held that a prior recorded purchase money mortgage on a car had priority over the lien of a repairman since the statute does not modify the basic rule of the recording act. In accord, Bouknight v. Headden, 188 S.C. 300,


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310 gives the Processor's lien priority over the Bank's earlier perfected security interest.

No reported South Carolina case appears to interpret Section 36-9-310. However, the Official Comments, cited above, persuade us that the holding of Powers and prior opinions of this Office have been overruled by the General Assembly's enactment of Section 36-9-310. Therefore, it is our opinion that the Processor's lien pursuant to Section 29-15-70 would be given priority over the Bank's security interest in the Debtor's "goods" in the Processor's possession, including the patterns, screens and fabric in such possession.

Sincerely yours,



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²(...continued)

199 S.E. 315 (1938). These cases would be reversed by this Commercial Code Section and priority would be accorded to the mechanic's lien since the statute creating the lien does not expressly provide otherwise. (emphasis in original).