Volume 74
Issue 4 *Dickinson Law Review - Volume 74, 1969-1970*

6-1-1970

The Pennsylvania Mechanic's Lien Law Limiting the Duration of the Lien: Requiring Plaintiff to Obtain a Judgement within Five Years

THE PENNSYLVANIA MECHANIC'S LIEN LAW LIMITING THE DURATION OF THE LIEN: REQUIRING PLAINTIFF TO OBTAIN A JUDGMENT WITHIN FIVE YEARS

Brann & Stuart Co. v. Consolidated Sun Ray, Inc.[1] demonstrates the unfairness which can result from a strict interpretation of the provision of Pennsylvania's Mechanic's Lien Law[2] which requires recovery of a judgment within five years. This Note will compare the Pennsylvania mechanic's lien staute of limitations with those of other states, point out the problems arising in connection with it and suggest possible changes in the statute to solve these problems.

In *Brann*, Brann & Stuart Company had filed a mechanic's lien against Consolidated Sun Ray, Inc. for labor and materials furnished in constructing a warehouse. In June of 1961, a writ of *scire facias* was issued. As a result of pretrial motions and other delays, including an appeal to the Supreme Court of Pennsylvania, the case did not come to trial rapidly enough to obtain a verdict within the five year limit[3] provided for in the mechanic's lien statute.[4] Brann had applied for a special listing to have their case heard within the allotted time period "which should have been granted but was denied."[5] Although this denial forced the recovery of a verdict after the time had expired, the trial court decided in favor of Brann. The Pennsylvania Supreme Court reversed on the grounds that, since the right to a mechanic's lien was statutory, the conditions of the statute must be strictly followed. The court stated: "The statute must be followed whether strict or liberal, harsh or equitable."[6] Justice Roberts dissented, preferring an interpretation that would bar the lienholder only if the delays were a consequence of his own actions. He would not place the lienholder at the "complete peril of delays which are

1. 433 Pa. 574, 253 A.2d 105 (1969).
2. Act of June 5, 1901, No. 240, § 10, [1901] PA. LAWS 431, *as amended*, PA. STAT. ANN. tit. 49, § 1701(d) (1963).
3. Brann & Stuart Co. v. Consolidated Sun Ray, Inc., 433 Pa. 574, 253 A.2d 105 (1969).
4. The *Brann* case arose under the Act of June 5, 1901, No. 240, § 10, [1901] PA. LAWS 431 (which required the issuance of a writ of *scire facias* and allowed five years from said issuance to obtain a judgment).
5. Brann & Stuart Co. v. Consolidated Sun Ray, Inc., 433 Pa. 574, 576, 253 A.2d 105, 106 (1969).
6. *Id.* at 577, 253 A.2d at 106.

either fortuitous or inherent in the judicial system as it presently operates."[7]

BACKGROUND

The basic purpose of a mechanic's lien is to give security to a person who has enhanced the value, through construction or other improvements, of the land upon which the lien attaches.[8] The lien creates an encumbrance on the title and gives the lienholder priority over other creditors. The right to such a lien can be found in Roman law,[9] which allowed a vendor to go after property no longer in his possession, but was nonexistant in the English common law.[10] The states, beginning with Maryland in 1791, created by statute the mechanic's lien in order to encourage men to enter the construction field.[11] In 1803, Pennsylvania passed the nation's second Mechanic's Lien Act,[12] providing a "remedy in the nature of a charge on land to secure a priority or preference of payment"[13] for those who improved land. The Act of 1803 had limited territorial application,[14] gradually expanded by later acts.[15] A Pennsylvania act in 1836 provided for the expiration of the lien five years from the filing of the claim unless revived by a writ of *scire facias* which would continue the lien for another five years.[16] Following this, a series of acts were passed amending previous mechanic's lien acts until, in 1901, an act was passed repealing all earlier mechanic's lien acts and combining their principles.[17] The Act of 1901 was constitutionally prohibited from extending the system of liens beyond that in existence at the time of the adoption of the Constitution of 1874.[18] A 1963 amendment[19] to the Act of 1901 limits the time in which to get a judgment to five years from

7. *Id.* at 578, 253 A.2d at 106-107 (dissenting opinion).
8. 4 AMERICAN LAW OF PROPERTY § 16.106F (A.J. Casner ed. 1952).
9. L. HOUCK, MECHANIC'S LIEN LAW § 4 (1867).
10. *Id.* at § 5 (once the property had left the possession of the laborer, he had no further claim to it).
11. W.M. ROCKEL, MECHANIC'S LIENS § 1 (1909).
12. Act of April 1, 1803, No. 9, § 1, [1901] PA. LAWS 446.
13. S. L. PHILLIPS, MECHANIC'S LIENS § 9 (3d ed. 1893).
14. The Act only applied to Philadelphia, the District of Southwark, and the Township of Northern Liberties.
15. *See* 1 E.H. CUSHMAN, THE LAW OF MECHANIC'S LIENS IN PENNSYLVANIA 5-6 n.13 (1925).
16. Act of June 16, 1836, No. 184, § 24, [1836] PA. LAWS 695.
17. Act of June 5, 1901, No. 240, § 52, [1901] PA. LAWS 431.
18. PA. CONST. art. III, § 7 (1874) (prohibiting the enactment of any special laws authorizing the extension of liens).
19. PA. STAT. ANN. tit. 49, § 1701(d) (1963), *amending* Act of June 5, 1901, No. 240, § 10, [1901].

the date of filing of the claim.[20] The 1901 act had allowed two years to obtain a writ of *scire facias* and five years from the issuance of the writ to obtain a final judgment.[21] The 1963 amendment which shortens the time period puts further pressure on the lienholder to proceed with haste, while in effect encouraging the property owner to procrastinate in the hope that the time allowed will expire, his title will be cleared, and the lienholder will lose his priority over other creditors.

Limitation on Mechanic's Lien Actions in Other States

Connecticut is the only other state which specifically limits the duration of the lien by limiting the time in which to obtain a judgment.[22] The remaining states only limit the time within which an action must be commenced.[23] Two states, Tennessee and Nebraska, exemplify a different approach by providing that the liens shall continue until the final determination of the suit, if the suit was initiated within the required time period.[24]

Several states have attempted to balance the desirability of rapidly removing liens upon land with the necessity of giving the

---

20. *Id.*, which states: "A verdict must be recovered or judgment entered within (5) years from the date of filing of the claim."

21. Act of June 5, 1901, No. 240, § 10, [1901] Pa. Laws 431 (required that a "verdict must be recovered or judgment entered on the writ of *scire facias* within five years after it is issued.")

22. Conn. Gen. Stat. Ann. § 49-39 (Supp. 1969).

23. Ala. Code tit. 33, § 42 (1958); Alaska Stat. § 34.35.080(a) (1962); Ariz. Rev. Stat. Ann. § 33-998 (Supp. 1969); Ark. Stat. Ann. § 51-616 (1947); Cal. Civ. Pro. Code § 1198.1 (West Supp. 1968); Colo. Rev. Stat. Ann. § 86-3-10 (1963); Del. Code Ann. tit. 25, § 2711 (1953); D.C. Code Ann. § 38-115 (1961); Fla. Stat. Ann. § 84.221 (1969); Ga. Code Ann. § 67-2002(3) (Supp. 1968); Hawaii Rev. Laws § 193-42 (1955); Idaho Code Ann. § 45-510 (1948); Ill. Ann. Stat. ch. 82, § 9 (Smith-Hurd 1966); Ind. Ann. Stat. § 2-618 (1968); Iowa Code Ann. § 572.27 (1950); Kansas Stat. Ann. § 60-1105 (1964); Ky. Rev. Stat. Ann. § 376.090 (1963); Me. Rev. Stat. Ann. tit. 10, § 3255 (1964); Md. Code Ann. art. 63, § 23 (1957); Mass. Gen. Laws Ann. ch. 254, § 11 (1959); Mich. Comp. Laws § 570.9 (1967); Minn. Stat. Ann. § 514-12 (1947); Miss. Code Ann. § 360 (1956); Mo. Rev. Stat. § 429.170 (Supp. 1969); Mont. Rev. Codes Ann. § 95-510 (1947); Neb. Rev. Stat. § 52-104 (1943); Nev. Rev. Stat. §§ 108.130, 108.233 (1967); N.H. Rev. Stat. Ann. § 447.9 (1968); N.J. Rev. Stat. § 2A:44-98 (Supp. 1968); N.M. Stat. Ann. § 61-2-9 (1953); N.Y. Lien Law § 17 (McKinney 1966); N.C. Gen. Stat. § 44-43 (1966); N.D. Cent. Code § 35-12-11 (1960); Ohio Rev. Code Ann. § 1311.13 (Baldwin 1968); Okla. Stat. Ann. tit. 42, § 172 (1954); Ore. Rev. Stat. § 87.055 (1967); R.I. Gen. Laws Ann. § 34-28-7 (1956); S.C. Code Ann. § 45-262 (1962); S.D. Code § 39.0715 (1939); Tenn. Code Ann. § 64-1106 (1956); Tex. Rev. Civ. Stat. Ann. art. 5520 (1958); Utah Code Ann. § 38-1-11 (1953); Vt. Stat. Ann. tit. 9, § 1924 (1958); Va. Code Ann. § 43-17 (Supp. 1968); Wash. Rev. Code Ann. § 60.04.100 (1961); W. Va. Code Ann. § 38-2-34 (1966); Wis. Stat. Ann. § 289.06 (Supp. 1969); Wyo. Stat. Ann. § 29-25 (1957).

24. Neb. Rev. Stat. § 52-103 (1968) ("The lien shall continue until such suit is satisfied and finally determined."); Tenn. Code Ann. § 64-1106 (1956) (". . . and until the final decision of any suit that may be brought within that time for its enforcement.").

lienholder a fair chance at utilizing his statutory privilege of priority. One method used is to provide for prosecution of the suit "without unnecessary delay"[25] or "with due diligence."[26] This method does not encourage the property owner to delay because to do so would only serve to prolong the cloud on his title. It also discourages the lienholder from sitting on his rights and tying up the land, since by such delay the lienholder could lose his lien. Procedural delays which frequently accompany court actions would not penalize either the property owner or lienholder. The result would be different, however, if the court believed that the lienholder or property owner was deliberately taking advantage of such delays.

The California and Washington statutes[27] provide that the suit must be prosecuted to trial within two years, or the judge may, at his discretion, dismiss the lien for want of prosecution. These statutes, by setting a fixed time, establish a standard. By leaving the dismissal of the lien to the court's discretion, however, such statutes are sufficiently flexible to encompass delays which may be unavoidable, inherent in the judicial system, or the fault of the property owner. The two year limit establishes a guideline for the lienholder but is not arbitrary.

A popular method for insuring rapid settlement of liens is to give the property owner a statutory right to demand that the lienholder commence suit.[28] Once the lienholder receives written notice from the property owner to begin suit he has a limited amount of time, usually from thirty to sixty days, in which to begin his action.[29] This places the burden of promptly removing the lien from the land on the person most affected by it. The property owner can have the lien removed at any time by paying the lienholder what he owes him, or by insisting that he bring suit. If the property owner doesn't demand action, he has only himself to blame for the lien tying up his land.

---

25. ARK. STAT. ANN. § 51-616 (1947); MO. REV. STAT. ANN. § 429.170 (Supp. 1969).

26. WYO. STAT. ANN. § 29-25 (1957).

27. CAL. CIV. PRO. CODE § 1198.1 (West Supp. 1968); WASH. REV. CODE ANN. § 60.04.100 (1961) (Both statutes are worded similarly: ". . . be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution.").

28. FLA. STAT. ANN. § 713.22(2) (1969); ILL. ANN. STAT. ch. 82, § 34 (Smith-Hurd 1966); IOWA CODE ANN. § 572.28 (1950); NEB. REV. STAT. § 52-122 (1943); N.J. STAT. ANN. § 2A:44-100 (Supp. 1968); OKLA. STAT. ANN. tit. 42, § 177 (1954); TENN. CODE ANN. § 64-1130 (1956).

29. Statutes cited note 28 *supra.*

The problem of crowded court dockets is serious in many jurisdictions. Justice Roberts, in his dissent in *Brann*, noted:

> . . . [T]he mechanic's lien . . . could be nullified in almost every case in Philadelphia County by the simple expedient of ordering it on the trial list for jury trial (unless the Court Administrator chooses to grant a special listing, since the Philadelphia jury trial list as it is now functioning requires more than five years after the motion for trial until a trial can be had.[30]

Yet, despite the judicial problem of crowded dockets preventing rapid disposition of cases, only two states have directly attacked the problem.[31] Connecticut provides for mechanic's lien actions to receive special assignments,[32] and Colorado arranges for lien actions to be placed at the head of the docket.[33] As the Colorado Supreme Court stated in *Tiger Placer's Co. v. Fisher*:[34] "The statute contemplates speedy disposition of cases of this nature."[35] A "speedy disposition" is impossible in a lien action if there is a long waiting period before trial. Pennsylvania's only answer to the problem, however, is the possibility of obtaining a special listing which will be granted only at the discretion of the court administrator. Failure to grant a special listing may result in the loss of the lien as in *Brann*.[36]

Comparison of Connecticut and Pennsylvania's Laws

As previously discussed, Pennsylvania, in 1963, amended the Mechanic's Lien Act of 1901 shortening the time allowed in which to receive a judgment. The 1901 Act had permitted a total of seven years to get a judgment-two years from the filing of the claim for a writ of *scire facias* plus five years from the issuance of the writ to the final settlement of the case. The legislature abolished the necessity of obtaining the writ of *scire facias*, allowing the lienholder only five years from the filing of the claim instead of seven to enter a judgment.[37]

The Connecticut statute,[38] the only other one requiring a judgment within a stated amount of time, allows even less time to obtain it. The Connecticut statute requires that an action must be

---

30. Brann & Stuart Co. v. Consolidated Sun Ray, Inc., 433 Pa. 574, 577, 253 A.2d 105, 106 (1969) (dissenting opinion).

31. Colo. Rev. Stat. Ann. § 86-3-13 (1963); Conn. Gen. Stat. Ann. § 49-39 (Supp. 1969).

32. Conn. Gen. Stat. Ann. § 49-39 (Supp. 1969) ("An action to foreclose a mechanic's lien shall be privileged in respect to assignment for trial.").

33. Colo. Rev. Stat. Ann. § 86-3-13 (1963) ("The court, whenever the issues in such case are made up, shall advance such cause to the head of the docket for trial.").

34. 98 Colo. 221, 54 P.2d 891 (1936).

35. *Id.* at 222, 54 P.2d at 892.

36. 433 Pa. 574, 253 A.2d 105.

37. Pa. Stat. Ann. tit. 49, § 1701(d) (1963).

38. Conn. Gen. Stat. Ann. § 49-39 (Supp. 1969).

filed within two years after the claim has been filed, and must be prosecuted to final judgment within another two years.[39]

Before the Connecticut legislature changed their law in 1965, the statute read: ". . . [T]he party claiming such lien, within said period, commences an action to foreclose the same and proceeds therewith to final judgment."[40] The Connecticut Supreme Court was called upon to interpret this section in *Stanley Svea Coal and Oil Co. v. Willimatic Savings & Loan Ass'n.*[41] The court held that the phrase "within said period", *i.e.* two years, pertained only to the commencement of the action and not to the pursuit of judgment within two years.[42] The court specifically indicated that the "day of crowded dockets makes such a result imperative. An action such as this has no privilege of assignment."[43] The court evidently did not correctly interpret the intention of the legislature since the law was amended in 1965 to specifically include pursuit of judgment within the two year period.[44] The legislature, impressed by the court's warning concerning crowded court dockets, granted mechanic's lien actions privilege "in respect to assignment for trial."[45] This provision manages to avoid one of the delays inherent in the judicial system—crowded court dockets. It does not, however, remedy the problem of appeals, stays, and delays by the property owner.

The Pennsylvania statute, although allowing more time to obtain final judgment than the Connecticut statute,[46] does not provide for court docket delays which could easily nullify the extra time by preventing the case from coming to trial within the required five years. It is submitted that the Connecticut statute, although containing a shorter statute of limitations than Pennsylvania, is superior to Pennsylvania's in its handling of the crowded court problem. As long as Pennsylvania persists in its demand for judgment within five years, a special listing should be mandatory, not discretionary.

Strict Statutory Compliance

A mechanic's lien, as a statutory creation and not an outgrowth

39. *Id.*
40. Conn. Gen. Stat. Ann. § 49-39 (1958).
41. 23 Conn. Supp. 329, 183 A.2d 285 (1962).
42. *Id.*
43. *Id.* at 332, 183 A.2d at 287.
44. Conn. Gen. Stat. Ann. § 49-39 (Supp. 1969).
45. *Id.*
46. Pennsylvania gives a possible total time of five years, Connecticut only four. Connecticut further divides the time into two years to commence the action and two years to receive judgment.

of the English common law, has always been strictly interpreted.[47] Pennsylvania courts have repeatedly ruled that if the statutory provision were not strictly followed the lien would be lost.[48] Thus, both the right itself and the method of enforcing that right are dependent upon the statutes whose provisions must be strictly followed.[49] This principle was defined in *Murray v. Zemon*[50] in which the Pennsylvania Supreme Court stated:

> We must always bear in mind that this is not a common law action, but rather a claim to assert a peculiar type of lien against real estate under the provisions of a statute, strict compliance with which has always been demanded. [Mechanic's] liens are purely creatures of statutes; they did not exist at common law. Consequently, they are available only on such terms as the Legislature saw fit to provide.[51]

The courts have therefore limited their power and, even when an unjust or unreasonable result occurs, have remained chained to the strict interpretation doctrine for statutory rights. In *Hall v. Steininger*,[52] the court sustained the defendant's demurrer, bluntly admitting that the plaintiff, by not following the mandatory procedure, lost his lien "even though there may be moral obligations."[53] In *Sterling Bronze Co. v. Syria Improvement Ass'n*,[54] a verdict was obtained from the trial court *after* the five year limit. The Pennsylvania Supreme Court would not allow the judgment to stand, holding:

> The claimant under a lien of this character has no greater right than the Legislature gave him . . . [T]his preference being of statutory origin must stand or fall upon compliance or noncompliance with the conditions and requirements imposed by the act under which the lien is authorized.[55]

Niessen v. Playwicki Park Corp.[56] was a case in which the court refused to retroactively apply the 1963 act; the lien having been filed while the 1901 act was still in effect. If the 1963 act had been applied, the plaintiff would not have had time to obtain his judgment. The court's decision in *Niessen* would not have aided Brann, however, since in *Brann* the time had expired under either act. The court's refusal to apply the shortened time period of

---

47. 23 P.L.E., *Mechanic's Liens* § 71 (1959).
48. *See, e.g.*, McCarthy v. Reese, 419 Pa. 489, 215 A.2d 257 (1965); Murray v. Zemon, 402 Pa. 354, 167 A.2d 253 (1960); Sterling Bronze Co. v. Syria Improvement Ass'n., 226 Pa. 475, 75 A. 668 (1910); Hall v. Steininger, 44 West 87 (C.P. Pa. 1950).
49. *See* McCarthy v. Reese, 419 Pa. 489, 215 A.2d 257 (1965).
50. 402 Pa. 354, 167 A.2d 253 (1960).
51. *Id.* at 358, 167 A.2d at 255.
52. 44 West 87 (C.P. Pa. 1950).
53. *Id.* at 89.
54. 226 Pa. 475, 75 A. 668 (1910).
55. *Id.* at 476-77, 75 A. at 669.
56. 39 Pa. D. & C.2d 197 (Bucks County 1965).

the 1963 act was partially based on the property owner's own actions. The court found that it would be unjust to reward the property owner for his delaying tactics by allowing him to take advantage of the 1963 change in time. The *Niessen* case unfortunately did not require the court to directly face the issue of expired time due to the property owner's actions versus the innocent lienholder. Nor did it do away with the doctrine of strict statutory compliance. It did show, however, that the court would not permit a property owner to take advantage of a situation he was primarily responsible for at the expense of a lienholder.

There are two cases in Pennsylvania which do not appear to require strict statutory interpretation. The Pennsylvania Supreme Court in *Rosenheck v. Stape*[57] held that the 1901 act, section 10, constituted only a "legislative declaration of what will constitute due prosecution."[58] This interpretation is similar to that given to the mechanic's lien statutes of California and Wasington.[59] A lower court decision, *A & C Construction Co. v. Maloof*,[60] held that the mere passage of time would not cause the lienholder to toally lose his lien, but that stays of proceedings would act to toll the running of the statute. In other words, the lien *could* run over the five year limit that commences with the date of the filing of the claim.[61]

Thus, these courts took other factors into consideration rather than adhering to strict statutory interpretation. A strict interpretation, on the other hand, allows no excuses; it is totally inflexible. The lien is lost after the five year time period expires. The majority in *Brann* required strict statutory construction: "It must be assumed that the legislature took delays, regardless of source, into account when it established the five year limitation. The statute must be followed whether strict or liberal, harsh or equitable."[62] The Pennsylvania legislature, having recently amended the statute in 1963, could be presumed to be aware of the problems. In 1901, the crowded court docket problem was not as acute as it is today. Yet, in 1963, when crowded court dockets were

57. 332 Pa. 287, 197 A. 531 (1938).
58. *Id.* at 288, 197 A. at 534 (the issue being tried, however, was the constitutionality of the law; Rosenheck, having obtained his judgment within the five year limit).
59. *See* note 27 *supra* and accompanying text.
60. 17 Monroe 223 (C.P. Pa. 1955).
61. The case was settled before appeal was brought. Therefore the issue was not brought before the Pennsylvania superior or supreme court.
62. Brann & Stuart Co. v. Consolidated Sun Ray, Inc., 433 Pa. 574, 253 A.2d 105 (1969).

a serious problem, the legislature shortened the time period from seven to five years while failing to provide a method for getting through the judicial proceedings, or even to trial, in time. Special listings are at the mercy of a court administrator who has discretionary power to grant the listing or not. A more practical interpretation than *Brann's* strict statutory construction would be that of *Rosenheck* which held that the statutory time provision was suggestive—not mandatory. This interpretation is supported by a leading authority on Pennsylvania trial procedure:

> In all cases where an act is commanded to be performed within a fixed time and involves the exercise of a purely judicial function or where it is impossible of judicial performance within the time fixed by the legislature, such provision will always be held directory and not mandatory.[63]

By holding that such provision is directory only, the court could insist that the lienholder prosecute his suit diligently, enabling early clearance of title and fulfilling the legislative intent. At the same time the lienholder would not be penalized for something which was the fault of the judicial system or his opponent. Thus, the Pennsylvania judicial system could accomplish the same equitable result which California and Washington provided for by legislative action.[64]

Conclusion

Pennsylvania's mechanic's lien law is not attuned to the rest of the nation. The purpose of the short time period apparently is to prevent unjustifiable "serious clogs" on titles.[65] This frees the land from having a lien hanging over it for an unnecessarily long period of time. Yet, by making the time period five years without allowing any discretion for excuses, Pennsylvania, in effect, encourages the property owner to delay while at the same time seeking to prevent the lienholder from doing so. It is more practical to require the diligent pursuit of justice without unnecessary delay. This would serve to prevent the lienholder from sitting on his rights or using delaying tactics and, at the same time, would not reward the property owner for his own delays. The property owner's cooperation would be fostered since it would be in the property owner's best interest to remove the lien and the consequent cloud on his title as rapidly as possible. It would also eliminate any unfairness which may result from delays that are not the fault of either party, but are caused by judicial tardiness. If the legislature wishes to further protect the property owner, it could amend the act giving the property owner the right to force the lienholder to commence suit. The problem of crowded court

63. B. Laub, Pennsylvania Trial Guide § 254 (1959).
64. *See* note 27 *supra* and accompanying text.
65. *See* P. Bayse, Clearing Land Titles § 140 (1953).

dockets could be easily avoided by giving lien actions a *mandatory* special listing. A mechanic's lien attaching to the land and improvements on the land creates an encumbrance on the title. This encumbrance should be adjusted as rapidly as possible and should take precedence over other less important suits on the docket. Finally, the court should be allowed more discretion to weigh the equities involved, and to penalize the delaying party.

JANE F. WOODSIDE