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Creditors' Rights

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Statutory Liens. The 1955 legislature, like so many of its predecessors, both created new statutory liens and made no effort to integrate them with the old ones.

One of the more distressing aspects of the haphazard proliferation of lien statutes is the legislature's assumption that the process can go on indefinitely. The time cannot be far distant when the ordinary or garden variety of creditor will be in a hopeless position; all assets of every failing debtor will be absorbed in statutory liens. Of course it is possible that in time every creditor will have a lien. We are already getting glimpses of the coming era, in which the battle will be for priority as against other types of lien and not just for priority over unsecured creditors.¹

Sprayers' and Dusters' Lien. Persons who spray orchards have long had a lien for their services and materials.² Chapter 217 very much extends the coverage, creating a lien for one who has "under contract" performed labor or services or furnished materials "in crop dusting or spraying crops or lands for the purpose of weed, disease, or insect control or for the purpose of promoting the growth of such crops." It will be noted that orchard land is not excluded, a circumstance which may on occasion be significant; if the orchard sprayer can choose his statute, the differences in filing periods and limitations periods may be important to him.

This is in several particulars a curiously incomplete statute. Contracts between whom and about what are covered by the phrase "under contract"? Will a tenant's contract meet the statute and if so will it bind only his interest in crops?³ Will suppliers and workmen have liens, on the theory their contracts with the sprayer or duster come within the statutory language?

¹ A few liens are specified to be superior to all others, e.g. the farm labor liens under RCW 60.12.020 and the timber workers' lien under RCW 60.24.090. The new seed lien, discussed below, is superior to "any lien except a labor lien." Unless draftsmen are very careful we may some day find that each of several types of lien is "superior to all others" as to the same property. Some lien statutes ignore the priorities problem. Several adopt a strictly mechanical solution. Under them the lien ranks from the time the work was done or the materials furnished. Other types of lien, attaching later, will be subordinate. Illustrative are RCW 60.04.050 (mechanics and materialmen), RCW 60.20.020 (nurserymen) and RCW 60.34.050 (restaurant and hotel workers). The legislature has shown no real inclination to grapple with the tough question, what are the relative equities of different types of lienors? The inter-relation of liens and the matter of over-lapping liens certainly merit serious legislative study.

² RCW 60.16.010 *et seq.*

³ The farm labor statute is precise on this point, putting the lien on the interest of the person, whether owner or tenant, who had the work done. RCW 60.12.010. The

The lien is in "all such crops so crop dusted or sprayed." The outcome of attempts to fasten the lien on pasturage or forest land is undeterminable. There appears to be no recourse for work done along roads, fences and ditches.

In reciting that the lien claimant must file and that the lien attaches "as of the date of such filing," Chapter 217 seems to resemble the mechanics' and materialmen's statute. The resemblance is deceptive. The earlier statute pretty clearly indicates that the lien of a mechanic or materialman attaches when the work is done or the materials are furnished, provided filing is seasonably effected.⁴ Taken literally, Chapter 217 says just the opposite. The lien comes into existence when filing is accomplished. It follows that a mortgage taken between the time the work was completed and the date of filing must be prior. That this meaning will be accepted by lienors without resistance is not likely.

Chapter 217 is silent concerning the priorities between the lien and antecedent encumbrances. This means the earlier encumbrance, if properly filed, will certainly be prior in right.

Chapter 217 contains nothing on the position of the new lien as to other statutory liens. Since the farm labor and seed lien chapter specifies priority for those types of lien,⁵ the sprayer and duster will follow them in the chain.

Seed Lien. Chapter 336 amplifies and amends RCW 60.12.010, which also regulates crop liens for farm labor and landlords. It adds a lien for suppliers of seed, furnished "at the request of the owner of real property or his agent." In omitting the reference to tenants which RCW 60.12.010 now contains, the legislative intent to exclude from the new lien seed furnished to a tenant seems evident. The variance may occasion considerable controversy about the agency status of a tenant.

The lien attaches only to the crops grown from the seed in the calendar year during which the seed was furnished. This limitation puts an obvious premium on identification of the crop as the product of the seed, a process which may be much more easily stated than accomplished. The potential for trouble where there are multiple seed suppliers is obvious.

Apparently the seed lien attaches when the crop comes into existence,

orchard lien, on the other hand, results only where the work was done "at the request of the owner."

⁴ RCW 60.04.060: "No lien created by this chapter shall exist . . . unless . . . a claim for such lien shall be filed. . . ." If notice is filed, it is hard to see how this language can have any practical effect.

⁵ RCW 60.12.030, farm labor; the new seed lien amendment is discussed below.

since Chapter 336 does not contain language tying the existence of the lien to the filing which is required to be accomplished within sixty days after delivery of the seed.⁶ The statute provides no guides to determine when a crop "comes into existence," a detail on which there may well develop differences of opinion.

Chapter 336 deals directly with the matter of priorities. It recites that the seed lien "shall be superior to any lien except a labor lien," illustrating the sort of pre-emption language which will become increasingly significant as more lien statutes are enacted.

The quoted reference to priorities is broad enough to induce an argument that earlier mortgages are also subordinated. The outcome of the litigation which seems inevitable on this issue is unpredictable.⁸

Nurseryman's Lien. In amending RCW 60.20.030 to increase the time within which a lien for labor or material expended "in planting trees, vines, shrubs, plants, hedges or lawns" is effective without filing, the legislature has again emphasized the risks to innocent encumbrancers created by such statutes. Notice of the lien formerly had to be filed within forty days after the labor was completed or the materials furnished. Chapter 239 extends the period to ninety days, an interval which has some precedent.⁹

The nurseryman's lien, like most of our labor and material liens, is effective from the time work was done or material furnished, if filing is seasonably made.¹⁰ The period between the day the lien is extant and the day notice of it is filed is a period of secrecy. During that period

⁶ Chapter 217, discussed above, reads on this detail, "such lien shall attach as of the date of such filing."

⁷ See note 1, *supra*.

⁸ See Legislation Note, *Creditors' Rights*, 28 WASH. L. REV. 172 (1953), for a discussion of the priorities between mortgages and statutory liens.

⁹ The different lien statutes vary widely in their specification of the time limit on filing of lien notices, this detail being apparently governed by expediency and political pressures rather than by any rational thinking. The periods are: RCW 60.04.040 (mechanics and materialmen), 90 days after work done or material furnished; RCW 60.08.020 (chattel lien) 60 days after chattel delivered; RCW 60.12.040 (farm labor) 20 days after work ends; (seed) 60 days after seed delivered; RCW 60.24.050 (timber workers) 30 days after completing the work; RCW 60.34.020 (restaurant and hotel workers) 30 days after work ceased. The new sprayers' and dusters' statute, discussed above, specifies 30 days after crops are harvested. The practice of tying the terminal date for filing to some point having no relation to the time the work was done seems to be a particularly dubious one. The orchard statute has been the classic example; it calls for filing within "40 days after the close of the labor for each season during which the labor is done."

¹⁰ See the discussion above at n. 4. The restaurant and hotel workers' statute (RCW 60.34.010 *et seq.*) and the nurserymen statute (RCW 60.20.010 *et seq.*) work as does the mechanics and materialmen statute. If the lien is prior to encumbrances under more general language such as appears in RCW 60.12.030 *et seq.* (farm labor) and RCW 60.24.090 (timber workers), the same secrecy problem exists.

no public record discloses the lien. Physical examination of the property may or may not reveal the work on which the lien rests.

The development of this area of legislative sanction for long periods of secrecy for liens, and an extension as in Chapter 239, are indeed anomolous. There is direct conflict with the policy demonstrated in the recording system.

Lien for Taxes. For some time the state has had a lien for taxes, in the reserve fund created by retainage from earned estimates under public improvement contracts. The pertinent legislation has been a part of the excise tax chapter. Chapter 236 transfers it to the lien chapter, RCW 60.28, and repeals RCW 82.32.250.

The only substantive change made by the new statute appears in section 5. This requires the public officer charged with payment of the contract to notify the tax commission when the work is done, and to withhold all of the reserve until he has the commission's reply indicating that its claim has been paid or is collectible without recourse to the lien. The old statute did not require such notice, and directed the withholding of payment to the contractor pending his production of the commission's certificate.

Section 5 would seem to be ambiguous. It says in effect that the disbursing officer shall not pay anyone, including the state, until the state has been fully paid or waives its lien. The certification of full payment is a particularly odd pre-requisite to disbursement, in light of section 4, which gives the state priority only as to the excise taxes produced by the specific contract concerned, and of section 6, which requires the disbursing officer to pay those claimants whose liens are superior to the state's, before paying the state.

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CRIMINAL LAW

Abandoned Iceboxes. Chapter 298 is the legislative response to those grim stories in the papers during the past year chronicling the children who had chosen to lock themselves into unused iceboxes and thereby met their own appointments in Sammarra. It will probably be another example of the comparative futility of avoiding risks by making their creator criminally liable; it is now a misdemeanor to discard, abandon, or leave "in any place accessible to children" any refrigerator, icebox, or deep freeze locker with a capacity of one and one-half cubic feet or more without taking off the doors thereof or making them ununlockable,