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MECHANIC'S LIENS—ALLOCATION AMONG MULTI-UNIT PROJECTS UNDER VIRGINIA LAW

I. INTRODUCTION

In several recent decisions the Virginia Supreme Court and the Federal District Court for the Eastern District of Virginia have ruled on the validity of blanket or joint mechanic's liens. The blanket lien, as may be inferred from its name, is used to encumber more than one property unit in a single action. Its benefit is sought when an artisan or material supplier has improved two or more units in one transaction, and there has been a failure of remuneration. The mechanic's lien gives the artisan a preferred status among creditors, and therefore its immunity to attack is of critical importance. The validity of blanket liens has been questioned in several recent decisions where a partial release of the attached property adversely affected the interests of parties other than the mechanic and his debtor, and where a single lien is sought for benefits bestowed under separate contracts. This comment will focus upon the application of the blanket lien with respect to multi-unit development in Virginia, considering both the typical subdivided property and its newer cousin, the condominium.

II. HISTORY

The mechanic's lien is purely a creation of statute.¹ It had no existence at common law and, independent of statute,² is unknown in equity.³ The common law lien, whereby the workman was permitted to retain possession of chattels upon which he had labored, provided the basis for its development.⁴

A mechanic's lien attaches and dates from the time the first work is performed or the first materials are furnished under the contract giving rise to it;⁵ however, it is merely inchoate⁶ until perfected by the filing of a memorandum showing, *inter alia*, the amount of the claim, the due date,

1. *Wallace v. Brumback*, 177 Va. 36, 12 S.E.2d 801 (1941); *See* 57 C.J.S. *Mechanic's Liens* § 1 (1948).

2. "As early as 1792, Virginia recognized that the mechanic was a person deserving special consideration [tax exemption—1792 Va. Acts, ch. 48, § 4] . . . However, it was not until 1843 that Virginia gave the mechanic a preference as a creditor [1843 Va. Acts, ch. 76, § 1-6]." 17 WASH. & LEE L. REV. 307, 308 (1960).

3. M. BURKS, COMMON LAW AND STATUTORY PLEADING AND PRACTICE, § 455, at 882 (4th ed. T. M. Boyd 1952). (Hereinafter cited as BURKS) (footnotes added).

4. *Id.*

5. *Merchants & Mechanics Sav. Bank v. Dashiell*, 66 Va. (25 Grattt.) 616, 625 (1874).

6. *DeWitt v. Coffey*, 150 Va. 365, 143 S.E. 710, 712 (1928).

and a brief description of the property on which the lien is claimed.⁷ When so perfected a security interest superior to the claims of most other creditors is established in the burdened property. The lien is extinguished unless enforcement proceedings are initiated by filing a bill in equity within six months of recordation of the memorandum or within sixty days from the termination of work on the structure, whichever occurs later.⁸

Due to the statutory origin of mechanic's liens generally, their impact and application vary among jurisdictions.⁹ In Virginia, the correct rule of construction is that there must be substantial compliance with the statutory requirements relating to the creation of the lien¹⁰ because it is in derogation of the common law.¹¹ Once a lien is created, however, the provisions with respect to enforcement should be liberally construed.¹²

Authority for the blanket lien is not specifically granted in the Virginia statutes.¹³ Rather, the blanket lien was judicially recognized and the conditions appropriate to its application were enunciated by the court in *Sergeant v. Denby*,¹⁴ under a law not materially different from the present statute.¹⁵ In *Sergeant* there was a single contract for the construction of two neighboring buildings, for which one lump sum payment was to be made.

7. VA. CODE ANN. § 43-4 (Repl. Vol. 1976).

8. VA. CODE ANN. § 43-17 (Repl. Vol. 1976).

9. BURKS § 455, at 882 n. 1.

10. H.N. Francis & Co. v. Hotel Rueger, Inc., 125 Va. 106, 99 S.E. 693, 694 (1919).

11. Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S.E. 294, 296 (1912) (quoting 20 A.&E. Ency. of Law 278 (2d ed.)).

12. H.N. Francis & Co. v. Hotel Rueger, Inc., 125 Va. 106, 99 S.E. 690, 694 (1919).

13. *In re* Thomas A. Carey, Inc., 412 F. Supp. 667 (E.D. Va. 1976); *See generally* VA. CODE ANN. § 43-3 (Repl. Vol. 1976 & Cum. Supp. 1978).

14. 87 Va. 206, 12 S.E. 402 (1890).

15. *In re* Thomas A. Carey, Inc., 412 F. Supp. 667, 672, n.3 (E.D. Va. 1976). The statute used in *Sergeant* provided in part:

. . . 'all artisans, builders, mechanics, lumber dealers and other [sic] performing labor or furnishing materials for the construction, repair or improvement of any building or other property, shall have a lien, as hereinafter provided, upon such property, and so much land therewith, as shall be necessary for the convenient use and enjoyment of the premises, for the work done and materials furnished,' . . ." § 3, Ch. 115, Va. Code 1873.

412 F. Supp. at 672 n.3.

The current statute provides:

All persons performing labor or furnishing materials of the value of fifty dollars or more, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof. . . .

VA. CODE ANN. § 43-3 (Repl. Vol. 1976).

There was no provision for keeping separate accounts of labor or materials furnished for each house. The Virginia Supreme Court held that the two buildings were, in effect, one piece of work; and, in light of the circumstances, the lien must be joint or not at all.¹⁶ Emphasis was placed on the fact that the work was performed under a single contract, a requirement further defined in *Gilman v. Ryan*.¹⁷ Additionally, the holding in *Sergeant* implied that where the rights of third parties are involved potential inequities might preclude the use of a blanket lien.¹⁸

It was precisely this circumstance that led to the invalidation of a blanket lien in *Weaver v. Harland Corp.*¹⁹ In *Weaver*, after releasing several lots from a lien against twenty lots, the lienors attempted to enforce their *entire* claim against the remainder. In explaining its rationale for denying a blanket lien under these circumstances, the court stated:

The policy of the law rests upon the same idea, viz.: to recompense . . . the [mechanic for the] value of the work done, or materials furnished, *in the construction of the building whose value he has contributed to increase*

[T]he insuperable objection to permitting a lien for materials furnished for several buildings to be included in one claim, with no specification of the amount furnished for each, is, that it enables the lienholder to shift the encumbrance at his pleasure, and to place the bulk of the claim upon any building, to an amount far exceeding the value contributed to such building . . . in derogation of the rights of other parties. (emphasis added).²⁰

To have allowed the lienors to shift the entire claim to less than all the properties would have resulted in burdening the remainder for benefits not received. The practical effect of this would be to force a third party, such as an owner, to pay for work done on other properties in order to secure a release of his own; or, similarly, the interests of other creditors would be in contest with debts derived in part from improvements to unrelated properties. To these parties the specter of insolvency and a forced sale is rendered less haunting through the hope that revenues will be augmented in proportion to their labors. By comparison, subordination to a foreign indebtedness holds slight promise of full satisfaction.

16. Under the circumstances, allocation to each house was impossible.

17. 95 Va. 494, 28 S.E. 875 (1898). The court held that where separate buildings are erected under separate and independent contracts, no single lien can attach under such contracts to all the buildings. This was even extended to include instances of separate estimates.

18. See *Weaver v. Harland Corp.*, 176 Va. 224, 234, 10 S.E.2d 547, 551 (1940). This issue is further discussed below.

19. 176 Va. 224, 10 S.E.2d 547 (1940).

20. *Id.* at 231, 10 S.E.2d at 550.

This objection is inapposite where only the owner and mechanic are concerned. In this instance a partial release shifting the burden to fewer than the entire number of parcels benefited is of little consequence, for the mechanic would presumably grant such a release only after his own interests were adequately protected.²¹

III. RECENT DECISIONS

Several recent decisions have more clearly defined the circumstances under which blanket liens are deemed valid. Drawing from the precedents of *Sergeant* and *Weaver*, the courts have established two controlling requirements in addition to the broad statutory mandate that liens be apportioned wherever possible.²² While discussed at length below, these requirements may be summarized as follows: (1) Release of less than all of the units under a blanket lien is allowed only where third party interests (such as mortgagees and other creditors) are not adversely affected; and (2) Blanket liens should only be used where the several property units to be attached were benefited as part of a single transaction, and there has been no provision for a separate accounting of materials furnished for individual units.

In a well-reasoned decision the Federal District Court for the Eastern District of Virginia acknowledged compliance and sanctioned the use of a blanket lien in the case of *In re Thomas A. Carey, Inc.*²³ *Carey* concerned an action by two material suppliers to enforce blanket liens against a 50-lot subdivision. Noting the absence of a release and the general delivery of materials to the project as a whole, under either a single contract or an open account,²⁴ the court sustained the validity of the liens, notwithstanding the involvement of third parties—in this instance the title insurer and the permanent lender. Distinguishing *Weaver*, the court found the thrust of that case not to be the general proscription of blanket liens where the interests of third parties are concerned, but rather the denial of their use where a partial release is *also* present.

Indeed, the court in *Carey* specifically recognized that the practice of supplying materials generally for subdivision construction was not condu-

21. Such an action may be beneficial, allowing sale of some parcels and satisfaction of the lien, a result more readily attainable than the sale of all units. In any case, the parties are free to bargain without worry of injury to other creditors.

22. VA. CODE ANN. § 43-4 (Repl. Vol. 1976).

23. 412 F. Supp. 667 (E.D. Va. 1976).

24. One of the plaintiffs had used a model to roughly allocate the amounts required on a per unit basis, but this was not found sufficiently specific to require a parcel-by-parcel lien. Cf. *Gilman v. Ryan*, note 17 *supra*.

cive to lot-by-lot allocation and unsuited to the application of separate liens.²⁵ However, where, as will be seen below, one or both of the requirements are not observed, the courts will disallow use of a blanket encumbrance. Legal and practical ramifications associated with rigid enforcement of these requirements are discussed below.

A. Allocation and Partial Release

The Virginia Code requires a memorandum to be filed allocating relevant charges to the property sought to be encumbered.²⁶ In effect, this dictates allocation of the mechanic's lien to individual property units whenever possible, thereby excluding usage of a blanket lien where individual liens can be achieved. Strict adherence to this section, then, precludes apportionment of a blanket lien and, by implication, a release of less than all the units.²⁷ The explanation for this, in what has been called compelling logic,²⁸ is that a partial release of a blanket lien belies the claimed inability to apportion which is the basis for the lien *ab initio*, thereby admitting noncompliance with the statute and rendering the lien invalid.

Improper release of a blanket lien, similar to that in *Weaver v. Harland Corp.*, was found in the recent Virginia Supreme Court case of *PIC Construction Company v. First Union National Bank*.²⁹ Insolvency, foreclosure, and sale had resulted in the conveyance of deeds of trust to the construction lender and a private purchaser, both properties being subject to a blanket lien filed by PIC Construction Company. As in *Weaver*, PIC released one of several lots from its lien and, without reducing the amount claimed, attempted enforcement against the remainder. Both purchasers attacked the validity of the lien on the grounds of failure to apportion. The court held that allocation of more than the proportional burden to the purchasers' interests rendered the lien invalid.

It is noteworthy that while much of the court's discussion evolved from PIC's failure to reduce the amount claimed, it ostensibly decided the case solely on the grounds of release, at least in theory, declining to adjudicate the issue of apportionment necessary to such a reduction.³⁰ This was a hollow pronouncement, for release and apportionment are two sides of the same coin. Indeed the court recognized this fact, noting that "failure to

25. 412 F. Supp. at 674.

26. VA. CODE ANN. § 43-4 (Repl. Vol. 1976).

27. As will be discussed later, there is some basis for allocation in condominiums, though express authority is given only to the unit owner for purposes of release.

28. *In re Thomas A. Carey*, 412 F. Supp. 667, 674 (E.D. Va. 1976).

29. 218 Va. 915, 241 S.E.2d 804 (1978).

30. *Id.* at 920, 241 S.E.2d at 807.

allocate, nevertheless, pervades the release issue"³¹ Put simply, the disproportionate burden upon the third parties involved was the result of PIC's failure to reduce the amount claimed subsequent to release of the one lot. To have done so would have required apportionment. And had PIC apportioned, it would have fallen victim to that "compelling logic"³² resulting in invalidation of its lien.

The Virginia statute, then as interpreted by the courts, prohibits the apportionment necessary to effect an equitable partial release of a blanket lien in such situations. Therefore, the question seems relevant as to whether an equitable means for apportioning blanket liens, and thereby permitting partial release, is desirable or possible.

Surprisingly, the Virginia General Assembly has collaterally attacked this problem in the recently enacted Virginia Condominium Act.³³ It provides that "[i]n the event that any lien . . . becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit."³⁴ Typically, the Master Agreement for the condominium as a whole provides a formula based on the unit's proportional share of the project's entire square footage.³⁵ If this mechanical method of allocation is deemed equitable for the unit owners as against the mechanic, it should in fact be equally appropriate where adopted for purposes of apportionment at the initiative of the mechanic and applied to the developer or other parties. The use of similar statutes in other jurisdictions as models for apportionment will be examined below.

The Wisconsin Supreme Court affirmed a lower court judgment imposing a proportional construction lien upon eight units of a thirty-five unit condominium in *Stevens Construction Corporation v. Draper Hall, Inc.*³⁶ These eight units were sold prior to institution of foreclosure proceedings. Pursuant to an agreement with the mortgagee, Stevens and another lienor were to receive a certain sum per unit sold in reduction of their respective liens in the ensuing fifteen months, after which time the proceeds of foreclosure would be applied toward the mortgage, with the remainder, if any, going to satisfy the claims of the mechanic's lienors. Only six units were

31. *Id.*

32. See text at note 28 *supra*.

33. VA. CODE ANN. § 55-79.39 *et seq.* (Cum. Supp. 1978); For a general discussion of the act see 9 U. RICH. L. REV. 135 (1974).

34. VA. CODE ANN. § 55-79.46(b) (Cum. Supp. 1978).

35. *Id.* § 57-79.46(b), 79.83, 79.84.

36. 73 Wis.2d 104, 242 N.W.2d 893 (1976).

sold in this period, not enough to satisfy Stevens. Following the Wisconsin condominium statute,³⁷ the trial court allowed apportionment of 1/35th of the total lien claim to each of the eight units. Stevens appealed, seeking enforcement of the entire balance of its claim against the first eight units sold. In affirming the trial court's verdict, the court reasoned:

The general rule is that a blanket construction lien against an entire property consisting of several parcels cannot be enforced *in toto* against less than all of such parcels. The reason is that it would be inequitable to burden some lesser portion of the liened premises with charges for labor and materials which were not actually furnished to that particular parcel. The corollary to this general rule is that, *where the total labor and material costs for which the blanket lien is claimed can reasonably be allocated to individual parcels, the amount of the lien can be apportioned to these individual parcels on the basis of such allocation and the liens enforced to this extent against individual parcels.* (emphasis added).³⁸

It is significant that the release executed pursuant to the sale of the six units under the fifteen month agreement was not held to invalidate the remainder of the lien. This, of course, was a direct outgrowth of the court's decision confirming, as equitable, the manner of allocation,³⁹ in addition to a farsighted statutory provision in point.⁴⁰

Under statutes identical to those in *Draper Hall*,⁴¹ the Montana Supreme Court sustained the validity of a blanket mechanic's lien filed against the Glacier Condominium project in *Hostetter v. Inland Develop-*

37. If a lien becomes effective against 2 or more units, any unit owner may remove the lien from his unit and from the percentage of undivided interest in the common areas and facilities appurtenant to such unit by payment of the fractional or proportionate amount attributable to his unit, such amount to be computed by reference to the percentages appearing on the declaration. Subsequent to such payment, the unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the lien. Partial payment, satisfaction or discharge as to one unit shall not prevent the lienor from proceeding to enforce his lien rights against any other units and the percentage of undivided interest in the common areas and facilities appurtenant thereto, for the amount attributable to such other units.

WIS. STAT. ANN. § 703.09 (2) (1978 Supp.).

38. *Stevens Construction Corp. v. Draper Hall, Inc.*, 73 Wis.2d 104, 242 N.W.2d 893, 899 (1976). In approving the lower court's method of apportionment, the court stated: "In this case, where the condominium units are roughly similar in value, and where each unit has the same share of the common area, it is reasonable to allocate, as the trial court did, 1/35th of the total lien claims to each of the eight units in question, and enforce the lien to that extent." *Id.*

39. 242 N.W.2d at 897.

40. WIS. STAT. ANN. § 703.09 (2) (1978 Supp.).

41. MONT. REV. CODES ANN. § 2324 (1947) is identical to the Wisconsin statute in note 37 *supra*.

*ment Corp. of Montana.*⁴² In this case, the plaintiff constructed ceramic bathtub enclosures under a single lump sum contract. Defendant Inland Development Corp. not only failed to complete payment to the contractor, but also failed to secure release of several units it subsequently conveyed in violation of a statute quite similar to its Virginia counterpart.⁴³ The court found that the plaintiff, Hostetter, should be allowed to satisfy the entire amount of its lien first from those units retained by the developer, and if not satisfied, then proportionately from the eighteen units previously sold.⁴⁴

This judicial sanctioning of apportionment between developer and unit owner has no direct support in the statutes described,⁴⁵ but rather results from equitable considerations.⁴⁶ Indeed, neither Montana⁴⁷ nor Wisconsin⁴⁸ have express statutory authority for the blanket lien. One speculates as to whether the Virginia Supreme Court will prove as flexible when the situation presents itself.⁴⁹ It is interesting to note that California, which has narrowly construed its condominium statute to apply only to situations involving repairs and thus denied its use even by analogy in the pro-rata allocation of liens to condominiums,⁵⁰ is a state which has a comprehensive statutory provision for creation and apportionment of blanket liens by the mechanic.⁵¹

At first glance, the rather mathematical allocation of blanket liens

42. 561 P.2d 1323 (1977).

43. Compare the Montana and Virginia statutes.

At the time of the first conveyance or lease of each unit following the recording of declaration every mortgage and every lien affecting such unit including the undivided interest of the unit in the common elements shall be paid and satisfied of record or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

MONT. REV. CODES ANN. § 2323 (1947).

At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration . . . any mechanic's or materialmen's liens affecting all the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid, satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied.

VA. CODE ANN. § 55-79.46(a) (Cum. Supp. 1978).

44. Hostetter v. Inland Development Corp. of Montana, 561 P.2d 1323, 1328 (1977).

45. See generally, MONT. REV. CODES ANN. § 2323-24 (1947), notes 37 and 43 *supra*.

46. Hostetter v. Inland Development Corp. of Montana, 561 P.2d 1323, 1328 (1977).

47. See generally, MONT. REV. CODES ANN. § 45-501 *et seq.* (1947).

48. WISC. STAT. ANN. § 289.01 *et seq.* (1977-79 Cum. Supp.) (West).

49. As noted earlier, the Virginia Code is also silent here. See note 13 *supra*.

50. E.D. McGillicuddy Const. Co., Inc. v. Knoll Recreation Ass'n., 31 Cal. App. 3d 891, 901, 107 Cal. Rptr. 899, 905 (1973).

51. CAL. CIV. CODE § 3130 (West 1974), cited in part in note 66 and in text at note 52, *infra*.

among condominiums would seem inapplicable to lots in a subdivided property. Condominiums are homogeneous in character and, thus, work giving rise to liens against them usually benefits each unit uniformly. However, work done in a subdivision, particularly that of clearing and grading, will probably vary considerably more from lot to lot depending upon terrain and enforestation. But consider the ramifications of foreclosure. In both situations, every unit is subject to sale and the mechanic admittedly cannot allocate his efforts. Would not lot owners and other third parties opt for a pro-rata allocation of the lien as a means for securing partial release and avoiding a sale?

Approaching the blanket lien from the mechanic's perspective, it would seem that the allowance of a pro-rata allocation for purposes of partial release would also be in his best interests. He has admitted his inability to allocate the services actually furnished by filing a blanket lien. Similarly, he cannot allocate in order to secure a valid release equitable to all parties involved. How, then, is he to effect a release of part of a multi-unit project in exchange for part payment without sacrificing the balance of his lien and his preferred status among creditors of a now probably insolvent enterprise?

In sum, the developer needs the release to begin selling his units and to regain solvency. A lienor, having expended time and money, needs the timely partial payment to maintain his cash flow. Allowance of pro-rata allocation based on acreage, home-size or condominium unit size as is appropriate is one means to free the property interest for resale.

This is the answer offered by California in its statute on blanket liens, which states in part that the mechanic "may estimate an equitable distribution of the sum due him over all of such works of improvement."⁵² In the absence of statute, this method of allocation, as well as having been judicially imposed⁵³ on numerous occasions, also has been upheld where the mechanic acted on his own initiative.⁵⁴

52. *Id.*

53. See *A.J. Raisch Paving Co. v. Mountain View S. & L. Ass'n*, 28 Cal. App. 3d 832, 105 Cal. Rptr. 96 (1972); *Buerger Inv. Co. v. B.F. Salzer Lumber Co.*, 77 Colo. 40, 237 P. 162 (1925); *Manchester Iron Works, Inc. v. E.L. Wagner Const. Co.*, 341 Mo. 389, 107 S.W.2d 89 (1937); *Associated Sand & Gravel Co. v. Di Pietro*, 8 Wash. App. 938, 509 P.2d 1020 (1973). Other cases are collected in *Annot.*, 68 A.L.R. 3d 1300 (1976).

54. See *M.R. Smith Lumber Co. v. Russell*, 93 Kan. 521, 144 P. 819 (1914) (material supplier); *Coen v. Hoffman*, 188 Mo. App. 311, 175 S.W. 103 (1915) (material supplier).

B. *The Single Contract Requirement*

In *United Masonry, Inc. v. Jefferson Mews, Inc.*,⁵⁵ the presence of two factors resulted in invalidation of the lien sought. First, the plaintiff sought enforcement of a single blanket lien for masonry work done under two separate contracts—one for a bathhouse common to the entire proposed 264 unit condominium and the other for work done on the initial 132 units. Second, while an encumbrance of the entire project was acceptable for work performed on the common bathhouse, the allowance of a lien on the land whereon the second 132 units were to stand would burden these future units for benefits not received. This latter objection evolved from the court's holding that, although unbuilt, these units were effectively created by the filing of the declaration of condominium and, though not attaching to them, a lien on the entire property would burden them for benefits not received. This infringement on property rights of unbuilt condominium units was not readily apparent. The court's ruling, therefore, represents an important caveat for would-be lienors.

Had the court found the other units not to be in existence, it would have been faced with the prospect of denying relief merely because a contractor working at one site for one developer had two contracts, each capable of supporting a separate lien on identical property. This consideration may have prompted the court to hold jointly on the basis that two separate and distinct contracts added disproportionate values to the property sought to be lienor.⁵⁶ Indeed, it could have decided the case on the single contract criteria alone, had it been dispositive, without reaching the more complex issue of disproportionate burdening. The injustice lies in the disproportionate burdening, not in its dual source.

In a situation where the only objection is one of form stemming from the mechanic's failure to file separate claims, one speculates whether the underlying equitable claim will prevail. As noted above, there is no statutory mention of blanket liens, hence, there is no mandate for the single contract criteria. This purely judicial creation would provide more flexibility if treated merely as indicative and not determinative of a blanket lien's validity. The few Virginia cases provide little guidance in predicting the court's direction. On the one hand, the court's rigid approach to the creation of mechanics' liens must be considered.⁵⁷ On the other, there is the view expressed by the court in *Weaver v. Harland*:⁵⁸ "It is not the contract

55. 218 Va. 360, 237 S.E.2d 171 (1977).

56. *Id.* at 380, 237 S.E.2d at 183.

57. *Gilman v. Ryan*, 95 Va. 494, 28 S.E. 875 (1898); *Trustees of Franklin St. Church v. Davis*, 85 Va. 193, 7 S.E. 245 (1888). See notes 10-12 *supra*.

58. 176 Va. 224, 230, 10 S.E.2d 547, 549 (1940).

for erecting the building which creates the lien, but it is the use of the materials furnished . . . and expended by the contractor . . . which gives the materialman his lien under the statute."⁵⁹

Elsewhere, generally speaking, blanket liens have been most frequently allowed in instances involving a single contract for a lump sum.⁶⁰ However, in many other instances the mechanic had also submitted to the developer a unit price,⁶¹ a situation held not to comply with Virginia Law⁶² as interpreted by the courts.⁶³ Under a similar statute,⁶⁴ early California cases held that failure of the lien to specify how much of the material and labor was furnished for each unit, where there was not a single lump sum contract, did not result in invalidation of the lien, but merely resulted in subordination to other liens.⁶⁵ This position, designed to protect third party creditors, has since been codified in a specific statute.⁶⁶ In contrast, the Virginia Supreme Court's position seems harsh and contrary to the remedial nature of the mechanic's lien statute,⁶⁷ denying the protection given by the legislature in the absence of specific statutory guidelines.

IV. CONCLUSION

While to date there have been few cases concerning blanket mechanic's liens under Virginia law, the prevalence of multi-unit developments portends the necessity of resolving several problems in their practical application. Recent cases have highlighted the need for providing an equitable manner of effecting allocation where the interests of parties other than the mechanic and developer are involved. Practically speaking, this situation includes nearly every multi-unit project of any size, because construction lenders, mortgagees, and other mechanics represent an integral part of any sizable development. The Virginia statutes give the mechanic a priority

59. *Id.* at 230.

60. *See generally*, cases collected in Annot., 15 A.L.R.3d 73 (1967); Annot., 68 A.L.R.3d 1300 (1976).

61. *Id.*

62. VA. CODE ANN. § 43-4 (Repl. Vol. 1976).

63. *See Gilman v. Ryan*, note 17 *supra*.

64. CAL. CODE CIV. PROC. § 1188 (enacted 1872; repealed 1951).

65. *Pugh v. Moxley*, 164 Cal. 374, 128 P. 1037 (1912).

66. CAL. CIV. CODE ANN. § 3130 (West 1974), provides:

In every case in which one claim is filed against two or more buildings or other works of improvement owned or reputed to be owned by the same person or on which the claimant has been employed by the same person to do his work or furnish his materials, whether such works of improvement are owned by one or more owners, the person filing such claim must at the same time designate the amount due to him on each of such works of improvement; otherwise the lien of such claim is postponed to other liens.

67. *See text and footnote supra* at note 13.

status among creditors,⁶⁸ yet for most purposes, any attempt to release less than all of the units it encumbers results in the surrender of this protection. The time and expense of litigation underscore the need for an alternative to blanket foreclosure. This is further highlighted by an examination of the interests of the parties involved. Allocation and partial release, if sanctioned, would provide a means of segmenting the lien into smaller claims that could be more readily satisfied, thereby promoting unit sales which would in turn provide the developer and his creditors with much needed liquidity. Allocation would additionally furnish the innocent purchaser an affordable means to gain clear title. It is suggested that legislative action establishing the requirements for blanket liens and providing for their allocation and partial release would do much toward freeing the courts to evaluate the validity of blanket liens according to the equities involved, rather than leaving an atmosphere of uncertainty where many claims are invalidated on the basis of uncodified technicalities.

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68. VA. CODE ANN. § 43-17 (Repl. Vol. 1976).