

**PETE WALL PLUMBING CO., INC. V. SANDRA ANDERSON BUILDERS, INC., 721 S.E.2D 663 (2011)**

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Court of Appeals of North Carolina.  
PETE WALL PLUMBING CO., INC., Plaintiff-appellant

v.

SANDRA ANDERSON BUILDERS, INC., Sandra B. Anderson (Groat), Housing Authority of the City of Greensboro, Willow Oaks Development, LLC, Carolina Bank, Andrea M. Bullard, Crystal M. Young, Alma Pickard, Octavia T. Liles, Ebony M. Washington, Marcus L. Purcell and Wife, Lakeisha R. Purcell, Defendant-appellees.

No. COA09-1449-2.  
Sept. 6, 2011

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JUDGE STEELMAN CONCURRED WITH SEPARATE OPINION:

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STEELMAN, Judge, concurring.

I concur in the majority opinion. It carefully and thoroughly analyzes each of the transactions involved and reaches the correct legal conclusions under the present state of our statutory and case law.

I write separately because I am concerned that the present state of our law does not provide adequate protection to suppliers of \*672 labor and materials as envisioned by Article X, section 3 of the North Carolina Constitution. In addition, the increasingly complex real estate arrangements now being used make it virtually impossible for a supplier of labor or materials to protect themselves under our lien laws.

*I. Constitutional Provisions*

Article X, section 3 of the North Carolina Constitution provides:

**Sec. 3. Mechanics' and laborers' liens.**

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

The General Assembly enacted Article 2 of Chapter 44A of the General Statutes to give effect to this Constitutional provision. See *Steel Corp. v. Brinkley*, 255 N.C. 162, 164, 120 S.E.2d 529,

531 (1961) ("Our Constitution contains a mandate directing the General Assembly to enact legislation to give mechanics and laborers a lien on the subject matter of their labor."); *Smith & Associates v. Properties, Inc.*, 29 N.C. App. 447, 449, 224 S.E.2d 692, 693 (1976) ("North Carolina's Lien Law is mandated by Article X, Section 3, of our State Constitution ..."). The purpose of the materialman's lien statute is to "protect the interest of the contractor, laborer or materialman." *Embree Construction Group v. Rafcor, Inc.*, 330 N.C. 487, 492, 411 S.E.2d 916, 920 (1992) (citation omitted); see also *Carolina Builders Corp. v. Howard-Veasey Homes, Inc.*, 72 N.C. App. 224, 229, 324 S.E.2d 626, 629 (stating that the purpose of Article 2 is "to protect the interest of the supplier in the materials it supplies; the materialman ... should have the benefit of materials that go into the property and give it value." (citation omitted)), *disc. review denied*, 313 N.C. 597, 330 S.E.2d 606 (1985).

## II. Contractor as Lessee

In the instant case, the property was owned by the Housing Authority, which leased the property to Willow Oaks, which sub-leased the property to SAB. Plaintiff supplied labor and materials to SAB. Any lien is valid "to the extent of the interest of the owner." N.C. Gen.Stat. § 44A-9 (2009). In a lease situation, such as that before this Court, the lien protection of the supplier of labor and materials is illusory. The lien can only attach to the extent of the sublessee's interest, and this evaporates upon expiration of the lease. I agree that this result is mandated by the Supreme Court decision in *Brown v. Ward*, 221 N.C. 344, 20 S.E.2d 324 (1942). However, I believe that such a holding does not provide suppliers of labor and materials with "an adequate lien" as mandated by our Constitution. The Supreme Court should reconsider its holding in *Brown* and the General Assembly should consider revising the provisions of Chapter 44A to prevent this unjust result.

## III. Complex Real Estate Agreements

In the instant case, a series of complex agreements were executed to achieve two purposes: (1) the erection of dwellings upon the lots owned by the Housing Authority; and (2) by contract to eliminate the possibility of any lien ever attaching to the lots and improvements in question.

Where it is clear that the principal purpose of the agreements was the construction of improvements upon real estate to the joint benefit of the owner, the lessee, and the sublessee, those parties should be deemed to be joint venturers, and the clauses in the leases prohibiting the lessee and sublessee from causing any lien to attach to the lots be declared void as against public policy.

If such provisions in leases and subleases are enforced by the courts, then they will effectively eviscerate the constitutionally protected lien rights of laborers and materialmen.

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