

## Summary of Decisions (1985-2024)

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1. *Addington-Beaman Lumber Co. v. Lincoln Savings & Loan Association*, 241 Va. 436, 403 S.E.2d 688 (1991).

The Supreme Court affirmed the dismissal of a lienholder's foreclosure action against appellees and release of the liens as a blanket lien was inappropriate in this case – the townhouses were connected by adjoining walls and subject to fee simple ownership. A substantial portion of specific invoices, delivery tickets and work ordered could be allocated to individual units. Thus liens should have been filed on specific units.

2. *Jaynes Concrete, Inc. v. Seabrook Corp.*, 29 Va. Cir. 1 (Newport News Jan. 30, 1992).

A lien was filed against defendants based on the contractor's claim for work performed. The court found the liens invalid and unenforceable and ordered that the bill be dismissed with prejudice. The court held that the "blanket" mechanic's lien was invalid because it failed to apportion the amount of its claim for the work performed and materials furnished by it on each of the various lots described therein.

3. *American Standard Homes Corp. v. Reinecke*, 245 Va. 113, 425 S.E.2d 515 (1993).

In six suits, the issue raised on appeal was whether the furnishing of replacement materials under a purchase order and invoice, more than 90 days after the last day of the month in which the materials were furnished, advanced the materialman's right to perfect a mechanic's lien for the debt due under the contract. The court held that the furnishing of replacement materials did not advance the perfection deadline where the contract for replacement materials was an entirely separate agreement. The court also considered whether a materialman's right to a mechanic's lien included interest on the unpaid cost of materials furnished at a rate fixed in its contract in excess of the legal rate and whether that right included attorney's fees for collection of the debt as provided in the contract. The court held that interest as defined in Va. Code Ann. § 6.1-330.54, the higher of the rate lawfully charged on a contract or the legal rate, was correctly included. The court held that the attorney's fee awards were within the chancellor's equitable powers, although such an award was not an element of a mechanic's lien claim. The court affirmed the awards for interest and attorney's fees. The court reversed in part and remanded with respect to the perfection deadline for mechanic's liens.

4. *Prepakt Concrete Co. v. Medicorp Properties, Inc.*, 33 Va. Cir. 385 (Fredericksburg 1994).

The issue before the court was whether a subcontractor whose license had inadvertently expired and was expired at the time of the execution of the subcontract, but who had

subsequently reinstated (not renewed) the license, could maintain a suit under the subcontract and enforce a mechanic's lien based on the subcontract.

The Circuit Court for the City of Fredericksburg strictly construed Chapter 54.1 in granting summary judgment and denying any recovery under the subcontract. The court declared the mechanic's lien invalid. The court ruled that the critical date for determining whether the subcontract was unenforceable was the date the subcontract was made. The subcontract was not validated by the subcontractor's subsequent reinstatement and procurement of a license.

5. *Bryant v. Uzzle*, Chancery No. CH No.-32331 (Chesapeake 1994).

This case demonstrates that Courts will reform a deed of trust to reflect the intentions of the parties and to correct a mistake. In that case, George W. Estes ("Estes") purchased a parcel of real estate with a loan to have been secured by a first deed of trust. The deed of trust was executed by Estes. However, through a clerical error, Lena Uzzle ("Uzzle"), Estes' girlfriend, was inadvertently inserted as a co-grantee on the deed conveying the property to Estes. Accordingly, due to a mistake, Estes and Uzzle were grantees in the deed acquiring the property and only Estes signed the deed of trust. The Honorable Izaak D. Glasser, Commissioner in Chancery, in his report, noted that the intent of the parties was clearly to give the mortgagee a complete lien against the entire property. Accordingly, the Commissioner reported that the mortgagee was entitled to reformation of the deed to eliminate Uzzle's name. The Honorable E. Preston Grissom, Judge of the Chesapeake Circuit Court, in his order dated October 19, 1994, agreed and reformed the deed to eliminate Uzzle's name as a grantee.

6. *Galloway Corp. v. S.B. Ballard Construction Co.*, 250 Va. 493, 464 S.E.2d 349 (1995).

In a case of first impression, the general contractor challenged the judgment of the district court, which ruled in favor of the subcontractors in a contract dispute between the parties that followed the project owner's default in making payment to the general contractor following the completion of a construction project. The general contractor contended that the terms of the subcontracts provided him an absolute pay when paid defense to his subcontractors' breach of contract claims based upon the owner's failure to pay. The court reversed in part the judgment of the district court and held that in the absence of a clear and unambiguous statement of the parties' intent as to the meaning of the time of payment provision in the construction subcontract, an absolute pay when paid defense was available to the general contractor if he could have established by parol evidence that the parties mutually intended the contract to create such a defense. The evidence showed that such a defense was contemplated by each of the subcontractors and was agreed to by each subcontractor with the exception of one subcontractor. Therefore, only one of the subcontractors, Ballard, had a breach of contract claim.

7. *Jolly v. Jaburg*, CH. No. 95-11022 (James City Cnty. 1995).

Jolly, the general contractor, contracted with Jaburg, the owner, to construct a modular home. Before starting construction, Jaburg, Jolly, the lender, and Lawyers' Title Insurance Corporation, acting as the MLA, entered into a mechanics' lien agent agreement whereby Lawyers' Title was

appointed as the MLA. The building permit contained the name, address, and telephone number of the MLA when it was issued. As the house was nearing completion, Jaburg was transferred to Texas and a dispute arose. Jolly filed a mechanic's lien for \$43,000 and brought suit against Jaburg, the Bradys (the new owners), and the lender.

The Bradys filed a petition pursuant to § 43-17.1 of the Virginia Code asserting that Jolly did not give notice to the MLA as required by § 43-4.01. In reply, Jolly asserted that the mechanics' lien agent agreement entered into among Jolly, Jaburg, the lender, and Lawyers' Title constituted sufficient notice under the statute because it put the MLA on notice that Jolly was the general contractor and would be seeking payment.

Ultimately, the trial court ruled against Jolly on the grounds that the mechanics' lien agent agreement contained the following language: "Any notice required or permitted under this agreement (other than notice required under § 43-4.01(B) of the Code where notice requirements specified shall control) shall be in writing and deemed delivered." In ruling for the Bradys, however, the court noted that, had this language not been included in the agreement, the court might have found that Jolly had a valid lien and that the mechanics' lien agent agreement was sufficient "notice" to the MLA under the statute.

8. *Breckinridge LP v. Regent Construction Corp.*, 37 Va. Cir. 431 (Loudoun Cnty. Dec. 18, 1995).

Waivers filed by defendants on the property sought to be liened were found to be unambiguous and clear. As such the waivers constituted a bar to defendants' right to assert a mechanic's lien.

9. *Straight Creek Processing Co. v. Lawyers Title Insurance Corp.*, No. 95-1825, 1996 U.S. App. LEXIS 1270 (4<sup>th</sup> Cir. Jan. 31, 1996).

The 4<sup>th</sup> Circuit affirmed a decision by the Western District of Virginia granting summary judgment in favor of defendant title insurer in Straight Creek's breach of contract action against the insurer. The court held that because the insurer did not deny coverage until after the company settled the claim with the seller, Straight Creek was not relieved of its duty to obtain the insurer's prior written consent to the settlement agreement.

10. *Waterfront Marine Construction, Inc. v. North End 49ers Sandbridge Bulkhead Groups A, B and C*, 251 Va. 417, 468 S.E. 2d 894 (1996).

The court reversed the judgment affirming a second arbitration award in appellee landowners' association's action for breach of contract and breach of warranty against appellant contractor. Appellant's failure to comply with a first arbitration award was not arbitrable and appellees' claims of breach of warranty were barred by res judicata.

11. *United Savings Association v. Jim Carpenter Co.*, 252 Va. 252, 475 S.E.2d 788 (1996).

Separate actions were brought for determination of whether materials furnished on construction projects were furnished pursuant to single, project-specific contracts or upon mere open account, and of whether materialmen timely perfected their mechanics' liens. Holding that materials were supplied to construction projects pursuant to single, project-specific agreements, such that materialmen had 90 days from date last item was furnished for each specific project in which to perfect a mechanics' lien on that specific property, the first judgment was affirmed; the second and third judgments were reversed and remanded.

12. *Farmers Bank v. Parker Energy & Petroleum Co., Inc.*, CH. No. 4874 (Isle of Wight Cnty. 1996).

Three banks made loans to Parker, who had an undivided  $\frac{1}{4}$  interest in a parcel of real estate, and attempted to secure those loans with a lien on Parker's interest in the property. Because Parker, individually, did not possess an ownership interest in the property at the time some of the instruments securing the loan were executed, the first two banks' loans were not properly secured. The third bank argued that its lien, secured by what was intended to be a second deed of trust on a  $\frac{1}{4}$  interest in the property, was superior to the first two banks' liens.

The Commissioner in Chancery, in his report, applied the maxim that "equity regards as done that which ought to be done" in order to determine the priority of the liens. This, the Commissioner reasoned, was the only way to place the parties in the security positions intended. The Honorable Westbrook J. Parker, Judge of the Isle of Wight Circuit Court, agreed with the Commissioner's application of the maxim and affirmed the Commissioner's findings. The Supreme Court of Virginia denied a petition for appeal on the grounds that there was no reversible error.

13. *Irby v. Roberts*, 256 Va. 324, 504 S.E.2d 841 (1998).

Appellee servient estate owners sued appellant dominant estate owners to prevent the construction of a pier extending from the servient estate. The Supreme Court reversed the trial court's holding in favor of the servient estate owners, finding the plat of the easement indicated the easement, the language in the deed was not ambiguous, the grant of the easement conveyed the necessary riparian rights to construct the pier, the intent to transfer the riparian rights was express in the language of the grant of the easement, and there was nothing in the deed to suggest the lines drawn on the plat restricted the length of the pier. Judgment in favor of the dominant estate owners.

14. *In re Mechanic's Lien Filed by Atlas General Contracting, Inc.*, CH. No. 98-756 (Portsmouth Dec. 9, 1998).

A circuit court ruled that a memorandum of mechanics' lien is wholly invalid where a lien claimant fails to fully and accurately describe the property to be liened and fails to accurately name the correct owner. In this matter, the lien claimant filed a mechanic's lien against

property owned by Portside Hospitality, L.L.C. The memorandum of lien incorrectly identified the owner of the property as “Portsmouth Hospitality, L.L.C.,” and the memorandum of lien’s “brief description and location of property” stated only “two story motel and restaurant.” In response to the owner’s motion to declare the lien unenforceable, the court ruled that the contractor’s description of the property was legally insufficient and that the contractor had failed to identify the true owner of the property, as required under the statute. Accordingly, the court concluded that the memorandum of lien was fatally defective and ordered that the lien be released from the property.

15. *Walker v. Bruce*, Chancery No. CH99-0631 (Roanoke Cnty. 1999).

The Court ruled that a lender and trustee were *bona fide* purchasers without notice who could not be divested of title. In the *Walker* case, the nephew of a decedent conveyed the decedent’s property to himself pursuant to a power of attorney given by the decedent. The nephew then encumbered the property with a deed of trust. A niece of the decedent brought suit challenging the validity of a conveyance pursuant to the power of attorney and the validity of the deed of trust on the basis that the nephew acquired the property by fraud and breach of fiduciary duty. In addition, she alleged that the power of attorney was invalid due to decedent’s incompetence. The Court granted a demurrer that the lender and trustee were not on notice of any purported fraud, and that they held valid title to the property. The lender and trustee then proceeded to foreclose.

16. *Carolina Builders Corp. v. Centi Equity Co.*, 257 Va. 405, 512 S.E.2d 550 (1999).

In a case of first impression, summary judgment in favor of appellee equity company in appellant builder's action to enforce a mechanics' lien was affirmed by the Supreme Court. The court determined that appellant violated the statutory provision, which limited the lookback period to 150 days, because he included sums due for dates earlier than the 150-day lookback period.

17. *Rountree Construction Co. v. Hillpoint-Mo. Ltd.*, CH. Nos. 94-371–94-375 (Suffolk Feb. 9, 1999).

A circuit court ruled that work performed by a contractor in demobilizing its equipment did not enhance the value of the property and therefore could not serve to extend the time in which a memorandum of lien must be filed under § 43-4 of the Virginia Code. The contractor had begun site work on the property in November 1993 and actual construction work ended on January 29, 1994. Between February 6 and 12, 1994, the contractor’s “work” on-site consisted solely of demobilizing his equipment. The contractor filed his memoranda of lien against the parcels on May 4, 1994, and the owner challenged the liens as not being timely filed. The contractor argued that the 90-day filing period did not begin to run until February 28, 1994, because the work required to demobilize his equipment occurred in that month. The court agreed with the owner that the memoranda of lien were untimely filed and ordered that the property be released from the liens.

18. *Virginia State Bar v. Goggin*, 260 Va. 31, 530 S.E.2d 415 (2000).

Appellant state bar challenged the circuit court's order to distribute appellee attorney's client trust funds pro rata to all claimants in appellant's action pursuant to Va. Code Ann. § 54.1-3936. The Supreme Court of Virginia reversed and remanded the distribution order for entry of an order to distribute appellee's trust account funds in accordance with clearly ascertainable ownership interests to the extent possible because clients retained an equitable ownership interests in the funds.

19. *Wrenn v. Mullian*, Chancery No. CH02-417 (Chesterfield Cnty. 2002).

The trial court granted a demurrer that a lender and trustee were *bona fide* purchasers where they ascertained the title to the property by relying upon a recorded Will which was later determined to be fraudulent and impeached.

20. *Drew v. Sparrow*, Chancery No. CH01-037 (Surry Cnty. 2004).

The Court held that Wells Fargo Bank, N.A. ("Wells Fargo"), the beneficiary of a deed of trust, and its trustee Nectar Projects, Inc. ("Nectar Projects"), were *bona fide* purchasers for value without notice that could not be divested of title. Drew, an heir of Clayton, filed a Bill of Complaint for Injunctive and Declaratory Relief seeking to invalidate two deeds for the same property into Sparrow, also an heir of Clayton, and a subsequent deed of trust on the property granted by Sparrow securing Wells Fargo. Pursuant to the first deed, Clayton deeded the property to Sparrow under a power of attorney in which Sparrow was appointed the attorney in fact. The second deed, executed after Clayton's death, deeded the property from all of Clayton's heirs, including Drew, to Sparrow. Drew alleged that the first deed was void because Sparrow breached her fiduciary duties as Clayton's attorney in fact. He alleged that the second deed into Sparrow was void because the grantors' signatures were forged. Relying primarily on *Jackson v. Counts*, the Court held that there was nothing about the second deed that would put a *bona fide* purchaser on notice of an alleged forgery, and that the second deed from all of Clayton's heirs remedied any breach of fiduciary duty allegedly involved in connection with the first deed. Accordingly, Wells Fargo and Nectar Projects were *bona fide* purchaser for value without notice that could not be divested of title, and Drew's sole remedy was an action at law against Sparrow.

21. *WM Specialty Mortgage v. Lazarte*, No. CL 79670, 2008 Va. Cir. LEXIS 1224 (Prince William Cnty. Apr. 4, 2008).

On a motion granting an order for default judgment, the court found that two lost and unrecorded refinance deeds of trust were valid, enforceable liens against the property.

22. *American Home Mortgage Corp. V. Allotey*, No. CL08-1251, 2008 Va. Cir. LEXIS 2516 (Prince William Cnty. Aug. 11, 2016).

The court issued a consent order correcting a scrivener's error and confirming the validity and priority of a deed of trust on the property.

23. *Hung-Lin Wu v. Juei Chuan Tseng*, No. 2:06cv580, 2008 U.S. Dist. LEXIS 73688 (E.D. Va. Sep. 22, 2008).

After briefing the court on appropriate sanctions, the court imposed sanctions against Juei Chuan Tseng and BHP. The Court said the Plaintiffs were entitled to two presumptions, limits to BHP's introduction of financial documents and transactions, introduction of further evidence, and an award of attorney's fees.

24. *Washington Mutual Bank v. Prado*, No. 78933, 2008 Va. Cir. LEXIS 1877 (Prince William Cnty. Oct. 3, 2008).

Final Decree quieting title to property finding a minor scrivener's error did affect the validity of a deed, and reforming and correcting the deed to convey the property.

25. *RRMM Design Build, LLC v. Marquis at Williamsburg, LLC*, No. CL08-1995 (York. Cnty. Mar. 1, 2011).

RRMM Design Build, LLC entered into a contract with Premier Properties USA, Inc. to provide labor and materials in the construction of a shopping center on property located in York County. Although the property was actually owned by Marquis at Williamsburg, LLC, the Premier contract identified Premier as the "Owner" and RRMM Design Build as the "Contractor." Thereafter, RRMM Design Build entered into numerous subcontracts, including a subcontract with Southeastern Interior Systems, Inc. ("SEIS"). The SEIS subcontract contained a pay-if-paid clause.

Premier experienced financial difficulty and did not pay RRMM Design Build for SEIS' work. Having not received payment from Premier, RRMM Design Build did not pay SEIS, prompting SEIS to file a mechanic's lien against the property.

Marquis' lender sold the property at a foreclosure sale. The subsequent owner of the property filed a petition under § 43-17.1 of the Virginia Code arguing that SEIS' lien was unenforceable because SEIS had a valid pay-if-paid clause in its contract and, thus, RRMM Design Build was not indebted to SEIS. SEIS conceded that it had no evidence that either Marquis or Premier Properties paid RRMM DB any of the amount claimed in the mechanic's lien, nor was there any evidence that Premier or Marquis ever would pay RRMM DB for SEIS's work on the property. The Court held if the general contractor is not indebted to the subcontractor, the subcontractor is not entitled to a lien. The trial court found that this principle applied to the case, ordered that

the subcontractor's lien be removed from the record, and dismissed the action to enforce the lien.

26. *Douglas v. HP Homes, Inc.*, No. CL11-2705 (Arlington Dec. 16, 2011).

A case involving, among other issues, whether a builder is a joint venturer or a general contractor. HP Homes, Inc., Douglas, and another party entered into an oral joint venture to purchase a residential lot and construct a single family residence. Title to the property was held in the names of Douglas and the other party, and the labor and materials were provided by HP Homes. After completion of the work, the property was sold to a third party, and HP Homes filed a mechanic's lien. Douglas filed a petition pursuant to § 43-17.1 of the Virginia Code to declare the mechanic's lien invalid on the grounds that (i) HP Homes was a member of the joint venture and could not occupy the status of general contractor to perfect the mechanic's lien and (ii) the mechanic's lien was not filed within 90 days after the last day of the month in which HP Homes last provided labor and materials to the property, and it therefore violated the 90-day rule contained in § 43-4 of the Virginia Code. The court granted the petition, rejecting HP Homes' arguments that Douglas did not have standing under § 43-17.1 because he no longer owned the property. The court held that HP Homes was in fact a joint venturer and not a general contractor and that the "date interest is due" on the face of the mechanic's lien determined the last date worked.

27. *Bank of Lancaster v. Bur*, Case No. CL13000096-00 (Westmoreland Cnty., Dec. 5, 2013).

The legal description of a deed of trust included only one of two adjacent lots. The house built on the property straddled the two lots. The bank had already sold the property at foreclosure based on the deed of trust with the defective legal description and delivered a trustee's deed to a third-party buyer at foreclosure. The bank filed a lawsuit seeking alternative forms of equitable relief, including reformation. The Court entered an Order reforming the deed of trust and the trustee's deed, effective as of the dates of their respective executions, to include the missing lot. As to the trustee's deed, the Court stated, "The Trustee's Deed (as defined in the Complaint) is REFORMED *nunc pro tunc* as of April 15, 2013, such that its legal description specifically includes both Lot No. 188 and Lot No. 189, as in the Correct Legal Description (as defined in the Complaint). It is DECLARED that both the Deed of Trust and the Trustee's Deed were and are valid and enforceable conveyances of the entire Property, as defined by the Correct Legal Description to include both Lot No. 188 and Lot No. 189."

28. In *Wells Fargo Bank v. Anheuser-Busch Employees' Federal Credit Union*, Case No. CL14000190-00 (Isle of Wight Cnty., Feb. 24, 2014).

A credit union scheduled a foreclosure sale based on a deed of trust that was in first lien position, according to the record title. Wells Fargo filed a complaint for injunctive relief, based on the theory that its refinance deed of trust was actually entitled to first lien position according to the doctrine of equitable subrogation, because its refinance loan had paid off a deed of trust that was recorded prior to the deed of trust held by the credit union. The Court



entered an order enjoining the credit union's foreclosure sale for 60 days pending further hearings. The Court stated, "The cloud on the title to the Property and the uncertainty as to the priority and extent of the deed of trust liens on the Property would have a chilling effect on the Foreclosure Sale, if the Court allowed it to proceed. It is likely that Plaintiffs will ultimately prevail on the merits of their case as set forth in the Complaint . . ." The case subsequently settled.

29. *Virginia Housing Development Authority v. Picard*, No. CL13002923-00 (Hampton Mar. 14, 2014).

A purchase money deed of trust and two subsequent deeds incorrectly named the grantor trust and its trustees. The VHDA filed a lawsuit seeking alternative forms of equitable relief, including reformation. On March 24, 2014, the Court entered an Order reforming all three instruments, effective as of the dates of their respective executions, correctly to name the grantor trust and its trustees. In addition, the Court quieted title to the property in the name of the current owner, and stated that he owned the property subject to two deeds of trust held by the VHDA.

30. *U.S. Bank National Association, as Trustee v. Stiles*, Case No. CL13001399-00 (Stafford Cnty., Apr. 4, 2014).

A credit line deed of trust that was in a second lien position was not paid off and released in the closing a loan refinancing the first deed of trust. The refinance lender filed a lawsuit seeking alternative forms of equitable relief, including equitable subrogation. The Court entered an Order equitably subrogating the refinance deed of trust to the lien position of the first deed of trust that was paid off and released to extent of the pay-off amount. The Court ordered that "the Refinance Deed of Trust . . . shall be and hereby is equitably subrogated to the lien position of the Household Deed of Trust . . . to the extent of \$548,318.92" and "that the Refinance Deed of Trust . . . shall be and hereby does have priority over the Credit Line Deed of Trust. . . ."

31. *Union Bank & Trust v. Hodge*, No. CL 16001022-00, 2016 Va. Cir. LEXIS 408 (Montgomery Cnty. Jul. 20, 2016).

Motion for default judgment granted. Finding a mistake on a credit line deed of trust where the grantors' names were omitted from the first page, the court ordered the credit line deed of trust reformed by adding the grantors' names to the first page of the credit line deed of trust.

32. *Nationstar Mortgage LLC v. Daraja*, No. 4:17cv122, 2018 U.S. Dist. LEXIS 21977 (E.D. Va. Feb. 9, 2018).

In consideration of Plaintiff's motion to remand and Defendant's motion to remove, the court granted Plaintiff's motion to remand as the Defendant did not secure the consent of all Defendants to removal.

33. *Bekenstein v. Bank of America, N.A.*, No. 180511, 2018 Va. LEXIS 135 (Va. Oct. 2, 2018).

Bekenstein appealed on the basis that the trial court erred in its Opinion and Order sustaining a demurrer by respondent/defendant Bank of America, N.A. holding that the complaint in this case of the petitioners failed to plead a claim for usury. Bekenstein further contended the trial court also erred in sustaining with prejudice Bank of America's plea in bar holding that the Bekensteins' claim of forgery was barred by the statute of limitations for fraud. The Supreme Court of Virginia granted the Motion to Dismiss filed by Bank of America, N.A., due to the failure of Bekenstein to join the trustee as a necessary party to the appeal.

34. *Cox v. Virginia Electric and Power Company*, No. 181032 (Va. April 24, 2019) (unpublished).

As the court saw no reversible error in the judgment of the Wise County Circuit Court granting summary judgment regarding boundary line, the petition for appeal was refused.

35. *Cox v. Virginia Electric and Power Company*, no. 181032 (Va. Jun. 28, 2019) (unpublished).

Appellants petition to set aside the April 24, 2019 judgment and grant a rehearing was denied.

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