Florida Law Review

Volume 10 | Issue 3 Article 4

September 1957

Proper Payment Under the Florida Mechanics' Lien Law

William F. Simonet

I. R. Ludacer

NOTES

PROPER PAYMENT UNDER THE FLORIDA MECHANICS' LIEN LAW

The mechanics' lien was unknown at common law; it is entirely a creature of statute.[1] The first mechanics' lien law was adopted by Maryland in 1791[2] to attract workers to the building industry and expedite construction of the City of Washington. This early statute gave liens to contractors in direct privity with the owner of the property being improved.[3] Most of the early statutes were, like the Maryland law, of very limited application,[4] but in the more recent mechanics' lien laws there has developed a tendency to extend protection to workmen and materialmen not in direct privity with the owner.[5] At the present time the various state statutes in this area exhibit great diversity in the nature and scope of the protection afforded the different members of the building industry.

FLORIDA LIEN LAW IN GENERAL

The Florida Constitution directs that "the Legislature shall provide for giving to mechanics and laborers an adequate lien on the subject matter of their labor."[6] Pursuant to this constitutional mandate the 1935 Florida Legislature adopted the Uniform Mechanics' Lien Act.[7] Seldom has a piece of legislation given rise to as much litigation and confusion as has this statute; subsequent amendments[8] have served only to compound the confusion.

The Uniform Law as adopted and modified by the Florida Legislature imposes on the owner a complex set of duties, the neglect of

---

[1]Sheffield-Briggs Steel Products, Inc. v. Ace Concrete Serv. Co., 63 So.2d 924 (Fla. 1953).

[2]Md. Acts 1791, c. 45.

[3]See Moore-Mansfield Constr. Co. v. Indianapolis, N.C. & T. Ry., 179 Ind. 356, 369, 101 N.E. 296, 301 (1913).

[4]See 2 JONES, LIENS, §1186 (3d ed. 1914).

[5]*Id.* §§1186-1233.

[6]FLA. CONST. art. 16, §22.

[7]Fla. Laws 1935, c. 17097. Florida was the only state to enact this law; it has since been withdrawn from the recommended list. For further discussion of this law see Note, 1 U. FLA. L. REV. 423 (1948).

[8]See Fla. Laws 1945, c. 22858, §7; Fla. Laws 1953, cc. 28243, §1, 28244, §1; Fla. Laws 1957, c. 57-302.

any one of which may result in a requirement that he duplicate a payment already made in good faith. The means whereby a potential lienor is enabled to protect himself, however, are clear and fairly simple. The law purports to limit the liability of the owner to the direct contract price less any money properly paid by him.[9] The scope of this note shall be limited to a consideration of the effects of section 84.05 of Florida Statutes 1955, which defines "proper payment." Of primary importance will be a determination of the circumstances under which the owner's payment will be held improper, thereby requiring double payment for the same improvement in order to protect his property from liens.

The owner must comply with certain requirements to assure that a payment will be proper. He must withhold all payments until they are due under the terms of the contract and the work for which he is paying has been performed.[10] On making a final payment to the general contractor, the owner must require an affidavit stating that all subcontractors, laborers, and materialmen have been paid, or, if not, naming those unpaid.[11] In the latter event the owner must withhold from his payment to the general contractor sufficient funds to pay those listed in the affidavit as unpaid.[12] In any event, he must withhold enough to pay amounts that will come due to laborers and those who have notified the owner of their intent to claim a lien by filing a "cautionary notice."[13] A payment that violates any of these requirements will not serve to reduce the lien liability of the owner's property below the contract price, but "savings clauses" in the statute limit the claims of any particular lienor to the amount by which the lienor was actually injured by the payment.[14]

There is, however, one section of the statute[15] — the "penalty clause" — that will, if violated, render the owner's property subject to liens without regard to the amount of actual injury suffered by the lienor attacking the payment as improper. The penalty provision is invoked if an owner who does not obtain a bond from the contractor

---

[9]FLA. STAT. §84.02 (1955); see Curtis v. McCardel, 63 So.2d 60 (Fla. 1953); Shaw v. Del-Mar Cabinet Co., 63 So.2d 264, 266 (Fla. 1953) (dictum). *But see* FLA. STAT. §84.05 (11) (a) (1955), as amended, Fla. Laws 1957, c. 57-302.

[10]FLA. STAT. §84.05 (10) (1955).

[11]FLA. STAT. §84.04 (3) (1955).

[12]Fla. Laws 1957, c. 57-302.

[13]FLA. STAT. §84.04 (1) (1955).

[14]FLA. STAT. §84.05 (13) (1955).

[15]Fla. Laws 1957, c. 57-302.

fails to withhold twenty per cent of each progress payment or pays more than eighty per cent of the contract price before obtaining an affidavit from the contractor. Under these circumstances his land will be subject to liens for all claims arising out of the improvement, without limitation by the amount of the contract price.[16]

Inexorably bound up with the propriety of payment is the lien priority system established by the statute. A detailed examination of this system is a necessary prerequisite to a complete understanding of "proper payment."

PRIORITY OF LIENS

Lienors under the statute are divided into four classes ranked according to the preference to be given to them when the fund available is inadequate to satisfy all liens.[17] The statute requires total satisfaction of the claims of a preferred class before any disbursement is made to a subordinate one. If the fund available is insufficient to pay all the claims of a given class, the money is to be prorated among the claimants of that class according to the amounts due them.[18]

Laborers

The highest priority under the statute is given to laborers, who have a right to full satisfaction of their claims from the fund available before any disbursement is made to any other class of lienors.[19] The laborer class includes anyone performing services on the site of the improvement but not supplying materials or the labor of others.[20]

---

[16]A prior version of this provision, FLA. STAT. §84.05 (11) (a) (1955), imposed unlimited *personal* liability on the owner and dispensed with the limits on the times for filing and enforcing claims when the penalty clause was violated. The Florida Supreme Court held these provisions unconstitutional in Greenblatt v. Goldin, 94 So.2d 355 (Fla. 1957). The legislature then enacted the statute in its present form, Fla. Laws 1957, c. 57-302.

[17]See FLA. STAT. §§84.06,.20 (1955). Liability under the lien law is limited to the owner's property. For simplicity, however, this note will treat the extent of lien liability to which the property is subject as a fund in the hands of the owner. Initially the fund is the contract price. Subsequent proper disbursements will diminish the fund, while improper disbursements will not.

[18]FLA. STAT. §84.06 (1955).

[19]FLA. STAT. §§84.06 (1),.20 (1955), Florida Fruit Co. v. Shakelford, 145 Fla. 216, 198 So. 841 (1940).

[20]FLA. STAT. §84.01 (1955).

Excepted from this class, however, are certain of the technical elite.[21]

In addition to this first priority the statute provides several other devices to protect the laborer. Although other potential lienors may, by written instrument, waive their rights to claim liens, an attempt by a laborer to do so will be of no effect.[22] Final payment to the general contractor in reliance on an affidavit falsely stating that all claims have been paid will not preclude an unpaid laborer from claiming a lien.[23] The right of a member of this class to a lien can, therefore, be extinguished only by payment or by failure to claim the lien within three months from the day he completed his work.[24] The possibility of claims by unpaid laborers consequently exists as an unrecorded cloud on the title to real property for three months from the completion of an improvement thereon.

Lienors Who Have Filed Cautionary Notice

The second priority class created by the statute consists of subcontractors and materialmen who have provided the owner with notice of their intention to claim a lien. This class is entitled to payment from any funds remaining after the claims of all laborers have been satisfied.[25] The required notice, commonly called the cautionary notice, must be served on the owner before the expiration of thirty days from the beginning of the claimant's contribution to the improvement, but not later than the last day he does work or delivers materials.[26] A cautionary notice not only places the claimant in a preferred class but it also prevents the termination of his right to claim a lien by final payment to the contractor pursuant to an affidavit that all claims have been paid.[27]

Other Lienors Except the General Contractor

The third statutory classification includes all lienors not within the first two classes except the general contractor.[28] This covers lienors who have filed a claim of lien against the property, or who file

[21] *Ibid.* Excluded are "architect, landscape architect, engineer, and the like."

[22] FLA. STAT. §84.26 (1955), Florida Fruit Co. v. Shakelford, *supra* note 19.

[23] FLA. STAT. §§84.04 (4),.05 (12) (1955).

[24] See FLA. STAT. §84.16 (1955).

[25] FLA. STAT. §84.06 (1955).

[26] FLA. STAT. §§84.04 (1),.06 (1955), Sheffield-Briggs Steel Products, Inc. v. Ace Concrete Serv. Co., 63 So.2d 924 (Fla. 1953).

[27] FLA. STAT. §84.05 (12) (1955).

[28] FLA. STAT. §84.06 (1955).

a cautionary notice after the time for obtaining Class (2) priority has elapsed, or who are named as unpaid in the affidavit of the general contractor.[29] A payment to a member of this class is proper only if enough of the contract price remains to pay all persons who are or will become members of the first two classes or of this class.[30] Final payment in reliance on a contractor's affidavit that does not name a claimant among those not yet paid will, however, bar the claimant from later becoming a member of this class by filing a lien or serving a late cautionary notice.[31]

General Contractor

The last lien in priority under the statute is that of the general contractor.[32] The primary value of his lien is that it, like all mechanics' liens, relates back to the commencement of visible operations on the improvement and is thus superior to any mortgage or other lien created after the beginning of the improvement.[33] The general contractor is not entitled to satisfaction of his claims until all members of prior classes who are directly employed by him have been paid in full and the owner is assured of this fact by an affidavit from the contractor.[34]

PROPER PAYMENT

The necessity of advancing money to the contractor during the construction of an improvement is a well-recognized one. Since an available market of willing workmen, subcontractors, and suppliers is essential to a building project, periodic payments to these groups are necessary. The draftsmen of the statute took cognizance of these economic facts of life in their attempts to provide means of payment during the course of the work. There are, however, a number of pitfalls that the owner must avoid if his payments are to be "proper."

---

[29]FLA. STAT. §84.05 (4) (1955).

[30]*Ibid.*

[31]FLA. STAT. §84.05 (12) (1955).

[32]FLA. STAT. §84.06 (1955).

[33]FLA. STAT. §84.03 (1) (1955). See also FLA. STAT. §§84.01,.20 (1955); Geiser v. Permacrete, Inc., 90 So.2d 610 (Fla. 1956); Hardee v. Richardson, 47 So.2d 520, 524 (Fla. 1950) (dictum).

[34]FLA. STAT. §84.05 (3) (1955); see Hardee v. Richardson, 47 So.2d 520 (Fla. 1950).

These dangers and the means of avoiding them can best be understood through a series of hypothetical illustrations. Consider, then, the plight of owner *O* in the construction of his new home.

The Necessity of Bonding

> O *has just received a modest legacy and decides that the time has come for the retirement cottage at the beach. He contacts* C, *a contractor of some reputation in the community.* C *agrees to build the house for $10,000, and a contract is executed.* O, *having great personal confidence in* C's *reputation, does not require a bond.* O *then gives* C *an agreed-upon $1,000 initial payment on the contract. Next day* C's *bulldozers begin to clear the land.*

O's initial payment of $1,000 is improper. The statute requires *O* either to have *C* obtain a bond in the amount of the contract price, conditioned on nonpayment of laborers, subcontractors, and materialmen, or to pay no money prior to the commencement of visible operations.[35] Consequently, unless *O* can withhold an amount equal to his initial disbursement from a later payment, his total lien liability will not be reduced by the $1,000 paid before commencement of visible operations; it will remain at $10,000.

There is, however, a more serious violation of the statute in *O's* conduct. If no bond has been furnished, *O* is required to withhold twenty per cent of each payment as it becomes due under the contract.[36] *O's* failure to do this in making his initial disbursement invokes the "penalty clause," rendering his land subject to liens to the full extent of all claims arising out of the improvement, provided the liens are filed within three months of the time the claimant completed his services. The contract price is no longer a limitation on *O's* lien liability; under the wording of the statute there is no way for *O* to remedy the impropriety of this payment. A recent dictum of the Florida Court, however, indicates that technical defects in adherence to this twenty per cent requirement can be remedied if the owner has at least twenty per cent of the contract price on hand at the time the final payment is due.[37] This interpretation of the statute is desirable even if not justifiable from its language.

---

[35]Fla. Laws 1957, c. 57-302.

[36]*Ibid.*

[37]Lehman v. Snyder, 84 So.2d 312, 314 (Fla. 1955).

Anticipating Future Claims

Assume that O *has required a bond from* C, *thus rendering the initial payment valid. Construction has been in progress for* five weeks *but is considerably behind schedule because of adverse weather.* C *is having financial difficulties because the expected progress payment from* O *has not yet become due.* M, *a masonry subcontractor who has been on the job since the first day, has not as yet received any payment for his services. Suspicious of* C's *repeated assurances of eventual payment,* M *serves* O *with a notice of intention to claim a lien.* O, *fearing a work stoppage and more delay, contacts* M *and pays him the amount indicated in the notice, resolving to reduce the payment to* C *by a like amount.*

Unwittingly *O* has again made a payment that may not operate to reduce his total lien liability, although this depends on several contingencies. *M* is a Class (3) claimant, since his notice to *O* was not given within the time required to give him a preferential Class (2) standing.[38] The payment will, therefore, be subject to attack by all laborers and Class (2) lienors, whether their claims arise before or after the payment to *M*.[39] All members of Class (3) who receive less than full satisfaction of their claims can also attack *M's* payment to the extent that they would have participated had the payment been applied pro rata to all claims in their class.[40] Since *M* as a member of this class would have been entitled to share with the others, the amount *M* would ultimately have received is properly paid.[41]

In order to determine the propriety of payment to *M*, *O* would have to anticipate all future expenses of construction. If these expenses exceed the contract price or are not discharged by *C*, *O*'s lien liability is not reduced by the amount paid to *M*.

O's payment to *M* is also improper as to *C* to the extent that *C* incurs a loss as a result thereof.[42] *C*'s right to attack the payment arises from *O*'s breach of a statutory duty to give *C* ten days' notice before making any payment directly to a subcontractor, laborer, or

[38]FLA. STAT. §84.04 (1) (1955). See also Sheffield-Briggs Steel Products, Inc. v. Ace Concrete Serv. Co., 63 So.2d 924 (Fla. 1953).

[39]FLA. STAT. §84.05 (4) (1955).

[40]FLA. STAT. §§84.05 (4), (5) (1955).

[41]FLA. STAT. §84.05 (5) (1955).

[42]FLA. STAT. §84.05 (6) (1955).

materialman.[43] Thus if *C* has a right to setoff against *M's* bill, because of inferior workmanship or the like, *C* is entitled to a lien for the amount of the setoff as a loss resulting from the payment by *O*.

Early Payment — Savings Clause

After making the initial payment of $1,000, O *made a progress payment of $4,000 to* C *when the foundations had been laid. The outer shell of the dream house is now nearing completion; when this point is reached* C *will be entitled to another payment of $4,000 according to the terms of the contract. Although progress has been slower than expected,* O *is pleased with the work and sends* C *his check for the soon-to-be-due payment. Later that day* O *receives a $3,000 claim of lien from* S *Lumber and Supply House. At noon the following day the outer shell of the house is completed. A day later another lien is claimed by* E, *the electrical subcontractor, for $1,500. Only $1,000 of the contract price now remains in* O's *hands.*

The second $4,000 payment to *C* is improper, since it was made before due under the terms of the contract.[44] This defect was remedied as soon as the payment became due by the subsequent completion of the outer shell of the house.[45] *S*'s lien, however, attached during the period between the time the payment was actually made and the time it should have been made, thereby rendering the payment improper as to *S*.[46] *S* therefore has a lien for $3,000 against *O*'s property.

E cannot attack the propriety of the payment, since, if made when due, the payment would have been proper as to him.[47] *E,* therefore, cannot claim an amount in excess of his pro rata share of the $1,000 of the contract price remaining in *C*'s hands.[48]

---

[43]*Ibid.*

[44]FLA. STAT. §84.05 (8) (1955).

[45]FLA. STAT. §84.05 (10) (1955).

[46]There is a possibility, however, that the payment will be considered proper even as to *S*. FLA. STAT. §84.05 (10) (1955) could be read to remedy the impropriety ab initio, thereby making it proper as to *S*. See Landrum v. Marion Builders, Inc., 53 So.2d 769 (Fla. 1951) (*semble*).

[47]FLA. STAT. §84.05 (10) (1955).

[48]See Beam v. Jerome Lumber & Supply Co., 74 So.2d 537 (Fla. 1954).

The amounts *S* and *E*, both Class (3) lienors, can realize on foreclosing their liens are, of course, subject to reduction if members of the same or a higher priority class have unsatisfied claims. Barring such complications, however, a problem as to the allocation between *E* and *S* still exists. Must *S* participate with *E* in the $1,000 remaining in *O*'s hands before going against *O*'s property for the amount of the improper payment, thus reducing the amount by which *E*'s claim is satisfied? Or can *E* take the entire $1,000, leaving *S* to obtain satisfaction from the amount held to be an improper payment? The latter method of distribution would increase *O*'s total liability, while the former method would reduce *E*'s recovery. No cases have been found that answer these questions.

Final Payment

O's house is now complete. C *has been in financial straits but has succeeded in delaying the laborers and subcontractors from presenting their demands to* O. L, *the landscaping subcontractor, has just finished his work.* C's *laborers and* R, *the roofing subcontractor, have not received any payment in several weeks, but they have agreed to wait until the completion of the job and the final payment to* C. R *is fairly secure, since he filed a notice of intention to claim a lien when he began work.* O, *after examining the property, gives* C *a check for the remaining ten per cent due on the contract.* C *assures* O *that all the bills have been paid but fails to furnish an affidavit to that effect. The next day* L *files a claim of lien after discovering that* C *is hopelessly insolvent.*

R, L, and *C*'s laborers have enforceable claims against the property. The laborers are members of priority Class (1), and *R* is a member of Class (2). Both of these classes would have been entitled to attack *O*'s final payment even if an affidavit had been furnished.[49] In fact, the members of these classes can attack any of the earlier payments to the general contractor[50] or to classes inferior in priority to their own, since, in making any such disbursement, *O* is under a duty to retain sufficient funds to pay all members of the first two classes,

[49]FLA. STAT. §84.05 (12) (1955); see Florida Fruit Co. v. Shakelford, 145 Fla. 216, 198 So. 841 (1940); Bensam Corp. v. Felton, 63 So.2d 278 (Fla. 1953) (*semble*).

[50]FLA. STAT. §84.05 (8) (1955).

including those who become members *after* the payment.[51] The rights of *R* and the laborers will, however, be terminated if they fail to file their claims within three months of the day their work was completed.[52]

L's claim, on the other hand, would have been barred had the requisite affidavit been obtained.[53] Even without the affidavit *L* is entitled to satisfy his claims only out of the final payment.[54] He will, of course, not realize his full claim if there are insufficient funds remaining after satisfying the claims of *R* and of *C*'s laborers.

Had *O* failed to require a bond from *C*, the consequences of his conduct would have been decidedly more serious. *O*'s disbursement of more than eighty per cent of the contract price prior to completion of the improvement and receipt of an affidavit from *C* would have invoked the penalty provision.[55] Under this provision *O*'s land would have been subject to liens by all unpaid lienors to the full extent of their claims. Thus, *O*'s liability would have been limited only by the value of his property, although he had already paid large sums for the improvement.

Techniques for Protecting the Owner

In theory the owner can protect himself completely from any liability in excess of the contract price simply by providing in the contract that no payment shall be due until three months[56] after all work on the improvement is completed and by making no payments until that time. Such an arrangement is almost impossible, however, because of the practical necessity of periodic payments to meet the demands of laborers and materialmen. Under the existing law these

---

[51]Fla. Stat. §§84.05 (3), (4) (1955).

[52]Fla. Stat. §84.16 (1955).

[53]Fla. Stat. §84.05 (12) (1955).

[54]Shaw v. Del-Mar Cabinet Co., 63 So.2d 264 (Fla. 1953); Curtis v. McCardel, 63 So.2d 60 (Fla. 1953). There is one qualification to this statement. Whether or not an affidavit was furnished, *L*, a Class (3) lienor, can attack any payment made by *O* directly to another Class (3) lienor during the course of the work. Fla. Stat. §§84.04 (2) (c),.05 (4),.19 (1955).

[55]Fla. Laws 1957, c. 57-302. If the contract price had been less than $3,000, however, and an affidavit had been given after final payment, the payment would have been treated as if made just after the affidavit was given. Fla. Stat. §84.05 (11) (b) (1955).

[56]See Fla. Stat. §84.16 (1955). An additional 20-day danger period exists under §84.18 unless the owner checks the lien docket before making payment.

payments will always carry some risks for the owner, but certain techniques are available to minimize them.

Bonding

If the owner requires the contractor to furnish a bond, he is relieved from the duty of withholding twenty per cent of the payments as they become due; his land will in no case be subject to liens in excess of the contract price.[57] The courts have considered such bonds to be for the owner's protection.[58] Consequently they have held that a subcontractor or materialman can recover on the bond only when he has a right to claim a lien against the owner's property.[59] On the other hand, one Florida case indicates that the surety is deemed to have contracted in contemplation of the lien law and that a violation of the obligations imposed upon the owner to protect the subcontractors and materialmen may discharge the surety.[60] The value of bonding as a protective device for the owner may, therefore, be illusory.

Escrow

A second protective technique that the owner may find useful is the depositing of the entire contract price in escrow at the signing of the contract.[61] This will assure all potential claimants of a fund on which they can rely in extending credit to the general contractor. Periodic disbursements will, of course, be necessary for the payment of laborers, but these payments are not improper if paid directly to laborers who have in fact performed their work. Since payment to subcontractors, materialmen, and the general contractor will be more or less assured by the escrow fund, these claimants may be willing to waive their rights to liens or to delay enforcement of their claims until the improvement is completed and all amounts due can be ascertained.

---

[57]Fla. Laws 1957, c. 57-302.

[58]See American Surety Co. v. Smith, 100 Fla. 1012, 130 So. 440 (1930).

[59]Curtiss-Bright Ranch Co. v. Selden Cypress Door Co., 91 Fla. 354, 107 So. 679 (1926); Dekle v. Valrico Sandstone Co., 74 Fla. 346, 77 So. 95 (1917).

[60]Standard Accident Ins. Co. v. Bear, 134 Fla. 523, 184 So. 97 (1938). The surety was not liable to the owner, who made final payment without obtaining an affidavit from the contractor after the owner had received notice of lien from the materialman.

[61]See Lehman v. Snyder, 84 So.2d 312 (Fla. 1955).

This procedure will eliminate all risks to the owner except the possibility of subsequent claims by unpaid laborers. If this sort of escrow arrangement is a practical alternative, it is probably the best method available for protecting the owner.

Other Safeguards

There are several other safeguards that the owner can employ to reduce the risks involved in making progress payments. The contractor can be required to submit receipts from materialmen and subcontractors for disbursements from one progress payment before he is entitled to his next payment. This will be some assurance to the owner that the money is being applied to the expenses of the improvement. The owner should also avoid any direct payments to claimants other than laborers. When possible, waivers of liens should be obtained on making progress payments and the final payment. In any event no final payment should be made before the contractor has submitted his affidavit that all claims have been paid.

Conclusion

The first mechanics' lien laws were intended to encourage the growth of the building industry. Since that time the need for such legislation has somewhat diminished, while the legislation has continued to expand. It is at least questionable whether the extreme measures invoked to protect the building industry are justifiable in the light of present-day conditions and whether the building industry is more in need of this protection than other segments of the economy.

Under the existing Florida statute the owner who wishes to improve his property has absolutely no way to protect himself completely and still proceed with his improvement. He cannot withhold all payment on the improvement until three months after completion and expect a general contractor to undertake the work; anything short of this leaves him open at least to the claims of laborers. Frequently the owner cannot know whether a particular payment is improper until long after he is obligated to pay it under the contract or the statute. The protection afforded by bonding may not be worth its cost.

The major part of the risk of the contractor's unreliability or dishonesty is placed on the owner by the present law, even when the

lienor could or does know of these faults. Since credit information sources are readily available to the building industry, the members of the industry should be better qualified than the average owner to determine the trustworthiness of a general contractor. This is especially true if the owner is building his own home and is without previous experience in the field. Under the statute, however, subcontractors, materialmen, and other potential lienors can rest fairly secure in the knowledge that if the contractor fails to meet his obligations the owner will be required to satisfy their claims in order to protect his property. Because of their complexity and uncertainty, the protective measures available to the owner are small consolation.

The penalty provision seems to place an especially unwarranted burden on the owner. It imposes on his property liability, unlimited by the contract price, regardless of whether the claimant was in any way injured by the violation. It is difficult to fathom the reasoning behind a statute that imposes civil liability for technical violations of its provisions in the absence of actual detriment to the claimant.

The complexity and ambiguity of the statutory provisions whereby the owner is enabled partially to protect himself virtually require that he seek professional help in discerning his rights and liabilities under the law. Further, it is doubtful whether even the lawyer, regardless of his familiarity with the statute, will be able to foresee every contingency under which the owner or his land might incur liability for payments beyond his contract price. Indeterminable duties are worse than no duties at all, especially when the courts are compelled to enforce these duties. It is hard to believe that the Legislature in passing this statute expected the property owner to be required to hire lawyers to oversee the construction of improvements to his property.

Another undesirable result of the Florida Mechanics' Lien Law is its effect on the clearance of title to real property for purposes of sales and mortgages. Since a claimant has three months after the completion of his services in which to file a lien, a cloud on the title to all real estate remains for this period of time. These unrecorded uncertainties in the title cannot be discerned by an examination of the abstract or any other record; they must be pointed out in a title opinion. This places an undue burden on mortgage loan institutions, title attorneys, and purchasers of real estate. It is virtually impossible to be assured of an unencumbered title if there have been any recent improvements to the property, since liens filed under chapter 84 will relate back to the visible commencement of operations and will not be destroyed by the good faith of a mortgagee or purchaser who be-