

Priority of All North Carolina Liens in Jeopardy with Pending Appeals Case

We've talked about "[Lien Priority](#)" in the past, and that's because lien priority is extremely important. When it comes down to the brass tax, the priority of your lien (over other liens) is critical in whether the lien gets paid or not.

North Carolina's Priority Rules

Every state treat its lien holders differently. In some states, a lien takes priority from the moment it is recorded. In other states - like North Carolina - the lien's priority actually relates all the way back to the date materials or labor is first furnished to the project.

So if you furnish materials and labor of day 1 of the project, and finally file a lien on day 600...you're lien has priority over everything that was filed after the project's day 1. Pretty powerful stuff.

Reviewing the N.C. Gen. Stat. § 44A-10, Justice Samuel J. Ervin Jr. discussed how irrelevant the lien statues would be without the so-called "relation back doctrine:"

The doctrine is inherent in the very statutes which give the contractor the lien upon the property improved by his labor or materials...; for it is plain that unless the contractor's lien when filed relates back to the time at which the contractor commenced the performance of the work or the furnishing of the materials, the object of the statutes can be defeated at the will of the owner of the property, by his selling or encumbering his estate. To hold that the doctrine of relation back is not inherent in these statutes would be to 'keep the word of promise to our ear, and break it to our hope.'
Equitable Life Assurance v. Basnight, 234 N.C. 347, 351 (1951).

Why the "Relation-Back" Rule is in Jeopardy

[Big thanks to the North Carolina Construction News](#) blog for bringing to our attention a case pending with the North Carolina Court of Appeals: [Preserve Holdings, LLC v. Superior Construction Corp.](#)

The construction lender in this case argues that the lien claimant's lien does not relate back to the first delivery of materials and labor because of partial lien waivers the claimant had executed over the course of the project.

You know these lien waivers, everyone signs them every time they get paid. If you get paid 5% of the contract price, you waive your right to lien for that 5%.

The construction lender is arguing that the lien claimant's lien can only relate back to the last partial lien waiver....and the trial court agreed.

So the case is now on appeal, and the [American Subcontractors Association of the Carolina's](#) filed a "Friends of the Court" brief (that's where we got that quote from Justice Erving Jr.). [Take a look at their brief here.](#)

Stay tuned to the Construction Lien Blog for updates on this important case.

Read this article on the Construction Lien Blog here:
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