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CREDITORS' RIGHTS—Who Is a Contractor Under the Mechanics' Lien Law. American Buildings v. Wheelers Stores, 585 P.2d 845 (Wyo. 1978).

American Buildings Company manufactured prefabricated buildings for commercial and industrial use. In 1974, representatives of Wheelers, a retail stores company, met with American's regional sales representative to negotiate the purchase of several buildings over a period of time. Since American did not sell its buildings directly to customers, the parties agreed that American would sell each building ordered by Wheelers to one of its independent dealers, who would, in turn, sell to Wheelers.¹ All purchase contracts were to be exclusively between Wheelers and the independent dealer in each transaction,² and Wheelers was instructed to make all payments directly to the dealer.³

Following this arrangement, Wheelers bought five prefabricated buildings from American through its independent dealers.⁴ In the fifth transaction, Wheelers purchased a building from Industrial Building Company, American's Wyoming dealer.⁵ Although this building was a standard design model, it was modified at Wheelers' request for a specially designed roof system.⁶ American delivered the building components to the store site in Torrington, Wyoming. When these components arrived, they constituted an essentially finished product, requiring only bolting together and erection to complete the structure.⁷ Although other American dealers had made separate contracts with Wheelers to erect buildings in the past, neither American nor Industrial supplied the labor for erecting this building. Instead, Wheelers hired labor from another source.⁸

Wheelers paid Industrial the full purchase price for the building upon its completion.⁹ Industrial, however, defaulted on its payments to the supplier, American Buildings Company, which then filed a materialman's lien against Wheelers¹⁰ under the Wyoming mechanics' lien statutes.¹¹

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1. American Buildings Company v. Wheelers Stores, 585 P.2d 845 (Wyo. 1978).
2. Brief for Appellant at 3, American Buildings Company v. Wheelers Stores, 584 P.2d 845 (Wyo. 1978).
3. Brief for Appellee at 3, American Buildings Company v. Wheelers Stores, 585 P.2d 845 (Wyo. 1978).
4. *Id.* at 4.
5. American Buildings Company v. Wheelers Stores, *supra* note 1, at 848.
6. Brief for Appellant at 4, American Buildings Company v. Wheelers Stores, 585 P.2d 845 (Wyo. 1978).
7. *Id.* at 4.
8. American Buildings Company v. Wheelers Stores, *supra* note 1, at 848, n. 6.
9. *Id.* at 846.
10. *Id.*
11. WYO. STAT. §§ 29-2-102 (1977).

In denying American's foreclosure action, the trial judge held that American did not come within the scope of protection afforded construction creditors under Section 29-2-102 of the Wyoming Statutes,¹² and also that American was estopped from asserting a mechanics' lien.¹³ On appeal, the Wyoming Supreme Court affirmed, holding that as a materialman, Industrial Building Company was not a contractor of Wheelers for the purposes of Section 29-2-102, and therefore American, as a materialman supplying another materialman, was not entitled to assert a lien under the statute.¹⁴ Although the court might have affirmed on the alternative theory that American was estopped from asserting a lien because Wheelers had relied on its instructions in making payment directly to Industrial,¹⁵ the court, having resolved the first issue, did not consider that question in reaching its decision.¹⁶

APPLICATION AND INTERPRETATION OF MECHANICS' LIENS

Mechanics' liens have been created by statute to secure priority of payment to particular classes of creditors in the construction field whose material or labor has enhanced the value of another person's real property.¹⁷ Mechanics' liens were not recognized at common law or at equity, and emerged in this country in response to the necessity of encouraging the growth of the construction industries during the economic and geographic expansion of the Federalist period.¹⁸ Today, every state has enacted some form of mechanics' lien law, although the different jurisdictions vary widely in the provisions, interpretation, and application of those laws.¹⁹ Therefore, determination of an individual claimant's rights is subject to the interpretation of local statutes.²⁰ Although some jurisdictions construe mechanics' lien

12. WYO. STAT. § 29-2-102 (1977).

13. *American Buildings Company v. Wheelers Stores*, *supra* note 1, at 847.

14. *Id.* at 850.

15. The basis for the lower court's holding on the estoppel issue was not discussed in the Wyoming Supreme Court opinion or in the briefs for the parties. However, the general rule is that the right to a mechanics' lien may be waived or lost by conduct on the part of the lien claimant which would render it inequitable for him to assert a lien. For a discussion of the issue of estoppel and waiver in mechanics' lien situations, see Annot., 65 A.L.R. 282, 317 (1930).

16. *American Buildings Company v. Wheelers Stores*, *supra* note 1, at 850.

17. *United Pacific Insurance Co. v. Martin & Luther General Contractors*, 455 P.2d 664, 675 (Wyo. 1969).

18. PHILLIPS, *MECHANICS LIENS* § 6 (1874).

19. 53 AM. JUR. 2d *Mechanics Liens* § 5 (1970).

20. *Id.* at § 7.

statutes liberally, as remedial measures,²¹ others, like Wyoming, interpret their statutes narrowly as being in derogation of the common law.²² Most jurisdictions, including Wyoming, insist on strict compliance with statutory notice and procedural requirements.²³

The Requirement of a Contract

In general, the right of materialmen or laborers to assert mechanics' liens depends upon the existence of a contract made with the property owner, his agent, or very commonly, with a contractor retained by the owner to obtain the materials or services from subcontractors.²⁴ However, while the contract is a prerequisite to the right to assert a mechanics' lien, the right itself is not a contract right. The contract does not create the mechanics' lien because, by statute, the lien arises automatically from the use of the materials or labor in improving real property.²⁵ The lien creates a right against the owner's property, which has absorbed the value of the materials or labor, regardless of whether the contract was made with the owner or with the owner's contractor.

When the contract on which a mechanics' lien is based has been made with a contractor rather than with the property owner, the right to assert the lien is either derivative or direct, depending on the type of statute involved.²⁶ Derivative liens depend on, and are limited by, the existence of a debt owing to the contractor by the property owner. Once the property owner has satisfied his debt to the contractor, all mechanics' liens claims against his property are discharged.²⁷

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21. *E.g.*, Missouri: *Western Sash & Door Co. v. Buckner*, 80 Mo. App. 95, 99 (1899); Arizona: *Ranch House Supply Corporation v. Van Slyke*, 91 Ariz. 177, 370 P.2d 661, 664 (1962). In Texas, constitutional provisions creating mechanics' liens are to be liberally construed, although interpretation of statutory liens are restricted to legislative intent. *Crutcher, Rolfs, Cummings, Inc. v. Big Three Welding Equipment Co.* 224 S.W.2d 884, 888 (1949), *reversed on other grounds* 149 T. 204, 229 S.W.2d 600 (1950).
 22. *Cities Service Oil Company v. Pubco Petroleum Corp.*, 497 P.2d 1368, 1372 (Wyo. 1972).
 23. *Arch Sellery, Inc. v. Simpson*, 346 P.2d 1068, 1071 (Wyo. 1959).
 24. *Western Sash & Door Co. v. Buckner*, *supra* note 21, at 99.
 25. 53 AM. JUR. *supra* note 19, § 49.
 26. The Wyoming mechanics' lien statute creates a direct lien. *Becker v. Hopper*, 23 Wyo. 209, 138 P. 179, 180 (1914), *affirmed on rehearing*, 147 P. 1085 (1915).
 27. Comment, *The Missouri Mechanics' Lien Statute—Is It Adequate?*, 26 Mo. L. Rev. 53 (1961).

Wyoming's mechanics' lien statutes fall into the direct lien category.²⁸ Direct liens arise independent of any obligation of the owner to the general contractor. Justification for allowing liens against real property by third persons who have no direct contractual relationship with the property owner is usually expressed in terms of an "agency" in the general contractor, sometimes said to have been created by statute, and sometimes implied in the owner-contractor relationship.²⁹ However, this quasi-agency relationship applies only for the purposes of mechanics' and materialmen's liens and their foreclosure, and does not encompass the usual agency relationship whereby contracts made by an agent bind his principal and third parties.³⁰ The contract between the owner and the general contractor is deemed to have authorized the contractor to make subcontracts on the owner's behalf. Consequently, laborers and materialmen entering into such subcontracts are presumed to have done so in reliance on the owner's ability to pay and not on the contractor's own credit.³¹ Whatever the source of the right, under a direct lien statute, a laborer or materialman may assert a lien directly against the property of the owner, even though the owner may have already paid his contractor in full.³²

Without the preferential treatment afforded by mechanics' lien statutes, materialmen and laborers would be reduced to the status of mere general creditors of the property owner or contractor.³³ However, remedies available to other kinds of creditors are usually not available to construction creditors. This is because the goods or services which have been contributed to the improvement of real estate lose their independent value when they are incorporated into the property. Materialmen and laborers cannot withhold property pending payment for their materials or services, as they neither possess nor control the property in question. Similarly, materials and labor cannot ordinarily be severed from real

28. *Becker v. Hopper*, *supra* note 26.

29. 26 Mo. L. Rev. *supra* note 29, at 53.

30. *Pierson v. Sewell*, 539 P.2d 590, 595 (Idaho 1975).

31. 53 AM. JUR. 2d *Mechanics Liens* § 101 (1970).

32. 26 Mo. L. Rev. *supra* note 27.

33. *Id.*

property without risk of waste, which effectively prevents repossession if payment fails.³⁴

Laborers and materialmen frequently find that judgment against undercapitalized general contractors fail because there are few unencumbered assets with which to pay those judgments.³⁵ They cannot initiate garnishment proceedings against the property owner if the owner has paid the contractor because no debt is due. Nor can they proceed directly against the owner if he has not paid the contractor since there is no privity of contract. Direct lien statutes provide statutory leverage for enforcing payment of debts by property owners and general contractors by putting the owner on notice that his title will be clouded by a mechanics' lien if either he or his contractor fails to pay for supplies and labor used in improving his property.

Risk of loss is allocated to the owner on the theory that having received the benefit of the goods or services in question, he should not be allowed to profit at the expense of laborers and materialmen who, in a highly competitive market, may be unable to protect themselves financially.³⁶ The owner is presumed to occupy a stronger bargaining position from which he can secure payment to subcontractors by the contractor. For example, when the owner selects a contractor, he may inquire into the contractor's financial standing. If the contractor's credit is questionable, the owner may either choose another contractor or require the contractor to put up a security bond to indemnify the owner against claims of laborers or materialmen. Moreover, the owner can withhold payment to the original contractor pending assurance that all claims arising out of contracts with the contractor have been satisfied by demanding lien waivers from subcontractors before making payment to the contractor.³⁷ Similarly, the owner can make all checks payable jointly to the contractor and potential lien creditors.³⁸ The laborer

34. Brown and Winckler, *The Construction Debt Act—A Critical Rejoinder*, 56 MICH. S. B. J. 768, 770 (1977).

35. *Id.*

36. 26 Mo. L. Rev. *supra* note 27.

37. *Western Sash & Door Co. v. Buckner*, *supra* note 21, at 101.

38. Wheelers took the precaution of making its check payable jointly to American Buildings Company and AASCO, an independent dealer in an earlier transaction, when AASCO was not an authorized dealer for American. Brief for Appellant at 4, *American Buildings Company v. Wheelers Stores*, 585 P.2d 845 (Wyo. 1978).

or materialman, on the other hand, has only the choice of accepting a subcontract, thereby gambling on a contractor's likelihood of paying him, or refusing it, and thereby risking what might have been a lucrative business venture.³⁹

Determining Who May Assert a Lien

Because mechanics' lien preferences extend only to specific classes of creditors, the question of who comprises those classes has been the subject of frequent litigation.⁴⁰ Section 29-2-102 of the Wyoming Statutes gives lien priority to any person who furnishes either labor or materials for any building by virtue of a contract with the property owner or with the owner's contractor.⁴¹ When a lien claimant has contracted to supply labor or materials with someone other than the property owner or his agent, the critical issue in determining the lien claimant's rights is whether he has contracted with someone who is the "owner's contractor" under Section 29-2-102.

THE COURT'S REASONING IN *WHEELERS*

In *Wheelers*, the Wyoming Supreme Court held that only those materialmen who had contracted directly with the property owner or with the owner's contractor could properly assert a materialman's lien in Wyoming.⁴² The absence of a contract between American and *Wheelers*, therefore, precluded American from asserting a lien unless Industrial, with whom American did have a contract, was a contractor for *Wheelers*. Thus, American's lien rights turned on the question of whether the court's definition of "contractor" included parties who had contracted with the property owner only to supply materials to be used in erecting the building.⁴³

39. 56 MICH. S. B. J., *supra* note 35.

40. See generally, Annot., 141 A.L.R. 321 (1942).

41. WYO. STAT. § 29-2-102 (1977) provides in part that every person who does or performs any work or labor or furnishes any material for any building, erection or improvement upon land by virtue of any contract with the owner or his or her agent, trustee, contractor or subcontractor shall have a lien for his work or labor done or materials furnished on the building, erection or improvements and upon the land belonging to the owner.

42. American Buildings Company v. *Wheelers Stores*, *supra* note 1.

43. In denying American standing to assert a lien, the court addressed two issues: first, whether Industrial was a contractor under § 29-2-102, and second, whether American could assert a lien under the statute if Industrial were not a contractor. Given the court's holding, however, the first issue is clearly pivotal to the second. Having determined that Industrial, as a materialman, was not a contractor for purposes of the statute, it would have been difficult for the court to have allowed American to assert a lien on another basis.

In deciding this issue, the court could have focused on the nature of the relationship created by the purchase contract between Industrial and Wheelers. Since Industrial had contracted with Wheelers to supply the prefabricated building, its relationship to Wheelers was, strictly speaking, that of a "contractor" to supply goods and not labor and materials.⁴⁴ Had the court approached the question in this way, its conclusion would have fallen in line with clear Wyoming and Missouri precedent on the status of materialmen as contractors and subcontractors under mechanics' lien laws.⁴⁵

The court, however, declined to take this approach and instead focused on Industrial's business function within the context of the construction industry. According to the court, when a contract involves construction or improvements on real property, the term "contractor" has a specialized, narrower meaning than that of "one who contracts with another to supply goods or services."⁴⁶ Applying the principle that statutory terms must be construed in the context of the subject matter to which they refer,⁴⁷ the court defined "contractor" as one who not only furnishes materials, but also installs them on the construction project. If his contract requires him to supply only the materials, he is merely a materialman and not a contractor within the meaning of Section 29-2-102.⁴⁸ Therefore, the purchase contract did not make Industrial a contractor under the statute.

44. BLACK'S LAW DICTIONARY (4th ed. 1968).

45. The Wyoming mechanics' lien statute was adopted in 1877 and modeled on a similar statute in Missouri. Therefore, Missouri authority, while not binding on Wyoming courts, is persuasive. *Arch Sellery, Inc. v. Simpson*, 346 P.2d 1068, 1070, n. 4 (Wyo. 1959), *aff'd on rehearing* 360 P.2d 911 (Wyo. 1961). Four years before the Wyoming statute was adopted, a Missouri court ruled that a materialman may be an original contractor if he furnishes material on a contract with the owner. *Hearne v. Railway*, 53 Mo. 324 (1873). That rule has been consistently followed in Missouri. *Ambrose Manufacturing Company v. Gapen*, 22 Mo. App. 397 (1886), *Western Sash and Door Co. v. Buckner*, *supra* note 21, and *E. C. Robinson Lumber Company v. Baugher*, 258 S.W.2d 259 (Mo. 1953). The question of whether a supplier of materials is a contractor or a materialman comes up frequently in the context of notice provisions of mechanics liens statutes which ordinarily accord longer periods in which to file notice of a lien to original contractors than to persons claiming liens based on contracts with the contractor. The Wyoming Supreme Court relied on the Missouri rule in deciding that a materialman was an original contractor who could take advantage of the longer notice period under the Wyoming statute in *Jordan v. Natrona Lumber Company*, 52 Wyo. 393, 75 P.2d 378, 385 (1938). The court in *Wheelers* distinguished *Jordan* on the basis of another issue, but did not confront the *Jordan* court's holding on the issue of whether the supplier was an original contractor by virtue of his contract to supply materials.

46. *American Buildings Company v. Wheelers Stores*, *supra* note 1, at 847.

47. *Id.*

48. *Id.*

Having concluded that Industrial was not a contractor, the court turned to the issue of whether a materialman supplying another materialman was protected under the Wyoming statute. The court decided this question in the negative.⁴⁹ American, as the supplier of a building to Industrial, could not assert a lien for that building against Wheelers, either as a subcontractor or as a materialman of another materialman. According to the court, American's relationship to Wheelers was too remote to justify its lien claim.

ANALYSIS

The court's holding in *Wheelers* reflects its concern with protecting property owners against claims of materialmen with whom they have no direct contractual relationship.⁵⁰ To obtain this result, the court conformed its interpretation of the Wyoming statute to a general rule of some jurisdictions.⁵¹ This rule permits suppliers of materials to persons who have contracted to furnish labor on construction contracts to assert materialmen's liens, but denies those rights to persons supplying materialmen, without regard to any agreement between the property owner and the materialman.⁵² An evaluation of the court's holding in *Wheelers*

49. *Id.* at 848-849.

50. The court expressed concern that an opposite holding would permit remote suppliers in a materialman's chain to assert liens against property, and a motivating factor in its decision was defining a cut-off point in a chain of supply to prevent this. *American Buildings Company v. Wheelers Stores*, *supra* note 1, at 850. Since justification for statutes providing direct liens weakens as the property owner's bargaining position weakens the farther one goes down on a materialman's chain, this concern is merited. However, that concern should not distract one from the purpose of mechanics' lien statutes, which is to provide protection for construction creditors.

51. *See*, Annot., 141 A.L.R. 321 (1942); 53 AM. JUR. 2d Mechanics' Liens §§ 71-73 (1970).

52. The difficulty the court had in applying this rule to the Wyoming statute is underscored by its inability to cite authority applicable to statutes similar to Section 29-2-102. Although the court cited substantial authority for arriving at this rule, *American Building Company v. Wheelers Stores*, *supra* note 1, at 847, n.4, an analysis of those cases against the statutes they were interpreting indicates that in every instance those courts were interpreting statutes which differ materially from the Wyoming statutes in terms of who is entitled to assert a mechanics' lien. *See, e.g.*, *Leonard B. Hebert, Jr. & Co., Inc. v. Kinler*, 336 So.2d 922 (La. App. 1976), construing LA. REV. STAT. 9:4801 (1968) and *Drake Lumber Co. v. Lindquist*, 179 Ore. 402, 170 P.2d 712 (1946), construing 1944 ORE. LAWS § 67-101. Under both the Louisiana and Oregon statutes, suppliers are cut off by statutory language which defines contractors and subcontractors as persons authorized by the owner to perform work on a construction project or otherwise having charge of the construction. Interestingly, the Wyoming court cited *Stewart v. Cunningham*, 219 Kan. 374, 548 P.2d 740 (1976) to support its conclusion. However, that case, construing KAN. STAT. §§ 60-1102, a statute with language similar to that of the Wyoming and Missouri statutes, held that a materialman was a contractor if he furnished materials on a contract for the improvement of property whether or not he also installed the materials. *See also* note 45, *supra*.

against the language of the Wyoming statute suggests that the court's concern with property interests of owners may have led it to exclude an entire class of construction creditors who should be protected under Section 29-2-102.

Contracting Capacity Under Section 29-2-102

The Wyoming Statute authorizes five kinds of people to make contracts on which lien claims may be based: the property owner, his agents and trustees, and his contractors and subcontractors.⁵³ Nothing in the statute indicates whether the terms "contractor" and "subcontractor" were intended to exclude "materialmen". The court in *Wheeler* found support for its determination of this issue in the fact that the word "materialmen" is not included in the list of possible "contract-makers" under the statute.⁵⁴ However, an opposite conclusion can also be inferred from the omission. After all, if the term "contractor" were intended to cover materialmen as well as persons performing services, it would have been redundant to refer to materialmen separately.

This second argument can be further bolstered by an analysis of the section in terms of contracting capacity. The five kinds of people authorized to make contracts giving rise to liens⁵⁵ are divided into two classes on the basis of their capacity to make contracts. The first class consists of the property owner, his agents and trustees, who may contract directly with materialmen and laborers for improvements on his real property. The second class includes contractors and subcontractors. Members of this class contract with the property owner to supply either labor or materials, or both, for the improvement. Contractors and subcontractors therefore would seem to be either materialmen or laborers. By virtue of their original direct contracts with the property owner, they may make subcontracts with third parties to furnish the supplies and labor which they are unable to provide themselves. The statute entitles both original contractors and third party suppliers to assert a lien. Since the statute

53. WYO. STAT. § 29-2-102 (1977).

54. The term "contract-makers" is used here to describe persons authorized by the statute to make contracts in order to avoid confusion at this point with the words "contractors" and "subcontractors". The difficulty of finding appropriate synonyms for "contractor" to indicate persons who make contracts illustrates some of the ambiguity raised by the court's definition.

55. See text accompanying note 52, *supra*.

treats liens arising from claims of materialmen and laborers on *direct* contracts equally, giving no preference to one over the other,⁵⁶ it is arguable that contracts made by materialmen and laborers with third party suppliers should also be treated equally under Section 29-2-102. Unlike the court, the statute appears to emphasize the contractual relationships between the various parties and not their business functions.

Applying Wheelers to Prefabricated Buildings Cases

The Wyoming rule seems to be particularly unresponsive to a new and growing faction of the construction industry, namely suppliers of prefabricated buildings. In manufacturing prefabricated buildings, much of the construction which would normally take place at the job-site is performed at the manufacturer's plant. In the *Wheelers* situation, American had completely constructed the building to be used at Wheelers' store site before it ever reached Torrington, Wyoming. All that was required to finish it at the site was its assembly on delivery. From a practical standpoint, then, in spite of the court's reluctance to accord American the status of more than materialman, there is little difference between the labor furnished in producing the prefabricated store building at American's plant and that which would have been expended in putting up a traditional building at the store site. Had American done the latter, the court would have had little difficulty in finding that American was itself a contractor or subcontractor. Similarly, a finished prefabricated building ought to constitute more than simply "materials furnished for a building" because it *is* in fact the building. In summary, the court failed to evaluate the relationship of American to the actual construction process of the prefabricated buildings it manufactured.

The court also ignored the reversal of roles of "contractor" and materialman in prefabricated buildings cases. In an ordinary construction project, the property owner approaches a contractor, whom he asks to furnish or obtain the materials and labor necessary for the project. Ignoring the initial meeting between Wheelers and American, in the instant case, Wheelers approached Industrial for the purpose

56. See, e.g., WYO. STAT. § 29-2-106 (1977).

of buying a building. Industrial, which had no part in either the manufacturing or construction process, obtained the building from American, who had provided all the labor and materials. While it seems clear that American was something more than a mere materialman in the transaction, the court imputed Industrial's status of materialman to American in an effort to deal with the anomalous situation of a construction "subcontractor"⁵⁷ supplying a materialman. Given the holding in *Wheelers*, it will be extremely difficult for manufacturers of prefabricated buildings to enforce lien claims under Section 29-2-102.

Other courts faced with the problem of balancing the interests of property owners against those of materialmen and subcontractors have been less willing to formulate a rigid test such as that promulgated in *Wheelers*. Instead, these courts have preferred to evaluate a claimant's rights in terms of the relations and dealings of the parties whose interests are involved.⁵⁸

In *Tiffany Construction Company v. Hancock & Kelley Construction Company*,⁵⁹ materialmen brought suit against the prime contractor and its bonding company for payment on certain claims arising out of a construction contract. Under the terms of the bond, the prime contractor had bound itself to pay only materialmen who had supplied materials to it or its subcontractors. However, the prime contractor did not bind itself to pay suppliers of materialmen. In determining whether the contractor's supplier was a materialman or a subcontractor, the court considered the following factors:

1. Does the custom in the trade consider the supplier a subcontractor or a materialman?
2. Are the items supplied generally available in an open market or are they customized?
3. In determining whether the material is customized, do the plans and specifications call for a unique product or

57. Here "subcontractor" is used in the sense of the court's definition.

58. *E.g.*, *Permian Corp. v. Armco Steel Corp.*, 508 F.2d 68 (10 Cir. 1974).

59. 24 ARIZ. APP. 504, 539 P.2d 978 (1975).

are these specifications merely descriptive of what is to be furnished?

4. Does the supplier's performance constitute a substantial and definite delegation of a portion of the performance of the prime contract?

These factors seem to be equally applicable to the question of distinguishing between materialmen and contractors. Adding two more considerations to an evaluation of the status of materialman or contractor might also prove useful.

5. Were the materials supplied to the contracting materialman in contemplation of a contract between the property owner and himself, or were they intended to be supplied as a part of his regular inventory?⁶⁰

6. Did the property owner stipulate a specific source for his materials when he contracted with the middleman to obtain them?

Had the court applied these factors in *Wheeler's*, it might have concluded that the initial meeting between *Wheeler's* and *American* to set up the procedure of sale and purchase of the buildings, the course of dealing between *American* and *Wheeler's* through several different contractors, and the modifications of the prefabricated building made at *Wheeler's*' request, constitute a more direct and substantial relationship than is superficially apparent. Although the court was concerned with the lack of direct contractual relationship between *Wheeler's* and *American*, it should be noted that the purpose of Section 29-2-102 is to create a lien on property in the absence of a direct contract between a lien claimant and the property owner. The critical relationship under the statute is not created by the contract but instead by the use of the materials supplied to the owner's property. At the same time, applying this formula

60. This would avoid the problem encountered in *Caulfield v. Polk*, 17 Ind. App. 429, 46 N.E. 932 (1897), cited in *American Buildings Company v. Wheeler's Stores*, *supra* note 1 at 848 (advance sheets). In that case a boiler was furnished to a machine works which was subsequently sold to the defendant. When the machine works defaulted on its payment for the boiler, the manufacturer sought a lien against the defendant. However, the lien was denied because when the boiler was sold to the machine works, it was intended to be a part of the general inventory of the machine works and was not supplied in contemplation of any contract with the defendant. In fact, the sale to the defendant arose some time after the boiler was sold to the machine works.

should effectively protect property owners from claims of remote suppliers in a materialman's chain whose contribution to the final product constitutes only an insubstantial part of the product.

CONCLUSION

In *Wheelers*, the court's preoccupation with protecting property owners from remote lien claimants led it to assert with black letter finality a rule which denies the lien claims of suppliers of materialmen without regard to the nature of the relationships involved. The controlling factor in the court's analysis of a valid lien claim by materialman was the business function of the contracting materialman. If he only supplies materials to a project, but does not perform work, all suppliers of materials and possibly of labor claiming liens through him are cut off. The court's ruling circumvents the purpose of the Wyoming mechanics' lien statute by excluding an entire class of construction creditors whose protection is contemplated by the statute. The holding also fails to respond to the changes brought about in the construction industry by the introduction of prefabricated buildings.

A better approach might have evaluated the actual relationships of the parties involved against the circumstances of their contracts and other dealings with each other. While this approach could have allayed the anxieties of the court and property owners concerning remote claims, it also would have avoided the flat implications of the court's holding in *Wheelers*.

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