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COMMERCIAL CODE

Mechanic's Lien: Farm Equipment

CODE SECTIONS:	O.C.G.A. §§ 11-9-310 (amended) and 44-14-363 (amended)
BILL NUMBER:	HB 239
ACT NUMBER:	647
SUMMARY:	The Act gives a mechanic's lien in farm equipment priority over perfected security interests unless a financing statement describing the farm equipment has been filed.

History

Traditionally, mechanic's liens on personal property have enjoyed priority over all other liens except tax liens or other liens of which the mechanic has notice.[1] In 1962, the Georgia General Assembly enacted the Uniform Commercial Code.[2] Confusion surrounding priorities led the Fifth Circuit Court of Appeals to describe Georgia law as a "leap-frogging history of lien law . . . the last leap wins."[3] Thus, the Fifth Circuit Court of Appeals held that since the Legislature had enacted a mechanic's lien provision in 1972 which conflicted with the 1962 U.C.C. provision giving perfected security interests priority, the latest enactment, the mechanic's lien, prevailed.[4]

Both provisions were subsequently amended. The U.C.C. provision, Ga. Code Ann. § 109A-9 — 310, was amended in 1978.[5] The Georgia Court of Appeals agreed with the trial court which noted that " '[t]his language clearly indicates the legislative intent to conclusively establish the priority of a perfected security interest over all liens described in Ga. Code Ann. § 67-1701 including the mechanic's liens set forth under Ga. Code Ann. § 67-2003 and further expresses the intention of the legislature that future amendments to the lien statutes should not be construed as repealing the priority provisions of Ga. Code Ann. § 109A-9 — 310.' "[6] Even

1. *See generally*, Note, *The Priority of a Mechanic's Lien in Georgia: United States v. Crittenden*, 14 GA. L. REV. 628 (1980).
2. 1962 Ga. Laws 156.
3. United States v. Crittenden, 600 F.2d 478, 479-80 (5th Cir. 1979).
4. *Id.* at 480.
5. 1978 Ga. Laws 1081, 1110.
6. Newton Ford Tractor Co. v. J.I. Case Credit Corp., 163 Ga. App. 497, 498, 294 S.E.2d 723, 724-25 (1982).

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though Ga. Code Ann. § 67-2003 was amended in 1979 and 1980, the Georgia Court of Appeals further quoted the trial court that " '[t]here was no indication whatsoever that the legislature intended to change the priority set forth in Ga. Code Ann. § 109A-9 — 310 by the subsequent reenactments . . . .' "[7] Hence, under *Newton Ford Tractor Co. v. J.I. Case Credit Corp.*, a perfected security interest takes priority over mechanic's liens.

HB 239

HB 239 amends O.C.G.A. § 9-11-310 concerning the priority of certain liens and O.C.G.A. § 44-14-363 concerning special liens on personalty. O.C.G.A. § 11-9-310(2) states that a mechanic's lien on farm machinery or equipment arising after July 1, 1985, has priority over a perfected security interest unless a financing statement describing the particular piece of farm equipment has been properly filed. The description of the machinery or equipment in the U.C.C. financing statement is adequate to preserve this priority as long as it provides reasonable identification. Under O.C.G.A. § 44-14-363, the mechanic does not have to surrender possession of personal property to the holder of a subordinate security interest or lien. The section also adds a provision that a mechanic's lien is superior to all liens except as provided in O.C.G.A. § 11-9-310.

The Act modifies the case law under *Newton*. The security interest perfected only by filing in accordance with O.C.G.A. § 11-9-401 will take priority over a subsequent mechanic's lien. The purpose of perfecting security interests is to give notice to subsequent creditors. If the prior perfected security interest is filed properly, the mechanic has notice. To enforce a mechanic's lien, the mechanic must either be in possession of the equipment or when possession is surrendered to the debtor, the mechanic must record his claim within ninety days after the work is done and material furnished or within 180 days in the case of repairs made on aircraft or farm machinery.[8]

7. *Id.* at 498, 294 S.E.2d at 725.
8. O.C.G.A. § 44-14-363(c)(1) (Supp. 1985).

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