

203 Va 73
Record No. 5303

**In the
Supreme Court of Appeals of Virginia
at Richmond**

S. L. BLANTON, ET AL.

v.

**A. S. OWEN,
t/a OWEN SUPPLY COMPANY**

FROM THE CIRCUIT COURT OF MECKLENBURG COUNTY

RULE 5:12—BRIEFS.

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. **SIZE AND TYPE.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5303

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 1st day of March, 1961.

S. L. BLANTON, ET AL.,

Appellants,

against

A. S. OWEN, T/A OWEN SUPPLY COMPANY, Appellee.

From the Circuit Court of Mecklenburg County

Upon the petition of S. L. Blanton and Margaret Nichols Blanton an appeal and *supersedeas* is awarded them from a decree entered by the Circuit Court of Mecklenburg County on the 14th day of December, 1960, in a certain chancery cause then therein depending wherein A. S. Owen, t/a Owen Supply Company, was plaintiff and the petitioners and others were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of two thousand dollars, with condition as the law directs.

RECORD

* * * * *

BILL IN CHANCERY.

To the Honorable G. E. Mitchell, Jr., Judge of said Court:

Your complainant respectfully represents:

1. That on or about August 1958, he was in the building supply business in Chase City, Virginia.

2. That on or about the said date S. L. Blanton, sometimes called Jeff Blanton, was a building constructor; that sometime prior to the said date Harold Lokken purchased certain lots in Chase City hereinafter described from the said S. L. Blanton and Margaret Nichols Blanton, his wife, and the said S. L. Blanton contracted with the said Harold Lokken to build a residence and other improvements upon said property.

3. That the said plaintiff contracted with the said S. L. Blanton to furnish certain materials to be used in the erection of the aforesaid building, as follows:

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4. That the said materials were used by the said S. L. Blanton in the erection and construction of the said building located on real estate standing in the name of S. L. Blanton and Margaret Nichols Blanton, which they have agreed to sell Harold Lokken, as follows:

All of that certain lot of land in Chase City District, Mecklenburg County, Virginia, being four lots Nos. 35, 36, 37, and 38, Block C of the Meadow Brook Subdivision, and being the same land conveyed by deed of Terry Lee White, widow, to S. L. Blanton and Margaret Nichols Blanton, dated July 21, 1959, recorded in D. B. 167, P. 527.

5. That within sixty days from the time said building was

completed plaintiff caused to be recorded in the
page 3 } Clerk's Office of the Circuit Court of the County of
Mecklenburg and State of Virginia, a notice of lien
as provided by statute, stating that your plaintiff claimed a
lien upon the said property of the said Harold Lokken, but
never has been conveyed to him and was then and still stands
in the name of S. L. Blanton and Margaret Nichols Blanton
to secure the payment of the sum of \$769.60, with interest from
October 5, 1959, until paid, together with a description of
the property intended to be covered by the said lien sufficiently
adequate for identification with the names of the owners of
the said property as above described; that the said account
was subscribed and sworn to by A. S. Owen and recorded in
Mechanic's Lien Book 11, Page 162, in the Clerk's Office of
said County, on October 9, 1959, at 3:45 P. M. as required by
law; all of which will more fully appear from a copy of said
notice of mechanic's lien filed herewith, marked exhibit "A."

6. That at the same time your plaintiff caused to be served
on S. L. Blanton, Margaret Nichols Blanton and Harold
Lokken a notice of your plaintiff claimed a lien on the prop-
erty of the said S. L. Blanton, Margaret Nichols Blanton and
Harold Lokken as will more fully appear from the notice of
said lien hereto attached marked exhibit "B"; that the only
other lien on the property aforesaid is a deed of trust exe-
cuted by S. L. Blanton and Margaret Nichols Blanton, his
wife, to Perry A. Ozlin, Trustee, dated August 3, 1959, re-
corded in D. T. B. 76, P. 391, to secure Farmers Bank of
Boydton a note for \$9,000.00.

7. That this suit to enforce the mechanic's lien aforesaid
was commenced on 7th day of April, 1960, and within six
months from the filing of the said account in the Clerk's
Office aforesaid, and giving notice of the said lien as re-
quired by statute.

8. That your plaintiff now charges that there is now due
and owing to him the sum of \$769.60; that no part thereof
has been paid by the said S. L. Blanton, Margaret Nichols
Blanton or Harold Lokken, and the same is a valid and sub-
sisting lien against the land, property and appurtenances
thereon hereinbefore described.

page 4 } WHEREFORE, your plaintiff prays that the debt
aforesaid be ascertained; that the property afore-
said may be sold to pay off and satisfy your plaintiff's

claim for the sum of \$769.60 with interest from October 5, 1959.

Filed in the Clerk's Office the 7 day of April, 1960.

Teste:

N. G. HUTCHESON, Clerk.

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EXHIBIT.

To Mr. Harold Lokken, Owner

You are hereby notified that S. L. Blanton, general contractor, is indebted to me in the sum of SEVEN HUNDRED EIGHTY FOUR and 45/100 (\$784.45) DOLLARS, with interest thereon from the 5th day of October, 1959, for work done and materials and supplies furnished, in and about the construction of a brick-veneer dwelling, which he has contracted to construct for you in the Town of Chase City, Mecklenburg County, Virginia, and that I have duly recorded a mechanics lien for same.

Given under my hand this the 9th day of October, 1959.

A. S. OWEN, Subcontractor
By Counsel.

W. P. CURRIER, JR.
Attorney at Law
Chase City, Virginia

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EXHIBIT.

MEMORANDUM OF MECHANICS LIEN CLAIMED BY
SUBCONTRACTOR.

A. S. OWEN, t/a Owen's Supply Co. of Chase City, Mecklenburg County, Virginia, subcontractor, claims that S. L. Blanton of Chase City, Mecklenburg County, Virginia, contractor, is indebted to him in the sum of SEVEN HUNDRED EIGHTY FOUR and 45/100 (\$784.45) DOLLARS for materials and supplies furnished for him; the said contractor, in and about the construction of a brick-veneer dwelling which he has contracted to construct for Harold Lokken,

the said S. L. Blanton, or some person unknown, which sum bears interest from the 5th day of October, 1959, and is now due and payable. For the foregoing sum due to the said A. S. Owen, subcontractor, as aforesaid, he claims a lien on the following described property of the said Harold Lokken, S. L. Blanton or person unknown, owner, to-wit:

All those four (4) certain lots or parcels of land lying and being in the Town of Chase City, Mecklenburg County, Virginia, and more specifically designated as Lots Nos. 35, 36, 37 and 38 in Block C of Plat of a part of B. R. Roberts Property in Chase City, Mecklenburg County, Virginia.

Given under my hand this 9 day of October, 1959.

OWEN SUPPLY CO.
by A. S. OWENS
Subcontractor.

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ANSWER.

Respondent, Harold Lokken, respectfully represents:

1. That he agreed with S. L. Blanton to buy the house and lot mentioned in this proceeding, if it was finished by October 1, 1959. It was not finished by October 1, 1959, and S. L. Blanton failing and refusing to comply with his contract, it was thereupon cancelled.

2. That respondent contracted no bills for materials or anything in connection with the building of the house and considers himself liable for nothing.

WHEREFORE, respondent prays to be dismissed as a defendant in this suit.

HAROLD LOKKEN.

State of Virginia,
County of Mecklenburg, to-wit:

This day, Harold Lokken personally appeared before me,

Edith C. Johnson, a Notary Public in and for the county afore-said, and being sworn, deposed and said:

That the facts set forth in the above answer are true to the best of his knowledge and belief.

Subscribed and sworn to before me this 12th day of April, 1960.

My commission expires on March 4, 1963.

EDITH C. JOHNSON, N. P.

Filed 4-12-60.

N. G. HUTCHESON, Clerk.

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DEMURRER OF MARGARET NICHOLS BLANTON.

Comes now Margaret Nichols Blanton, by Counsel, and says that the bill filed in this cause is not sufficient in law, for the following reasons:

1. The Bill in Chancery shows on its face that the suit was not instituted within the time prescribed by Section 43-17 or 43-22 of the Code of Virginia, as present amended.

2. That in filing the lien set forth in the Bill in Chancery the plaintiff did not comply with Sections 43-4, 43-7, 43-8, 43-9, 43-10, 43-11 and 43-12 of the Code of Virginia, or either of them, in that the lien as filed did not set forth the record owner of the property which the bill attempts to subject to the lien.

3. The suit is filed by a materialman, and does not allege that the owner is indebted to the general contractor.

Filed April 13, 1960.

N. G. HUTCHESON, Clerk.

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DEMURRER OF S. L. BLANTON.

Comes now S. L. Blanton, by Counsel, and says that the bill filed in this cause is not sufficient in law, for the following reasons:

1. The Bill in Chancery shows on its face that the suit was not instituted within the time prescribed by Section 43-17 or 43-22 of the Code of Virginia, as present amended.

2. That in filing the lien set forth in the Bill in Chancery the plaintiff did not comply with Sections 43-4, 43-7, 43-8, 43-9, 43-10, 43-11 and 43-12 of the Code of Virginia, or either of them, in that the lien as filed did not set forth the record owner of the property which the bill attempts to subject to the lien.

3. The suit is filed by a materialman, and does not allege that the owner is indebted to the general contractor.

Filed April 13, 1960.

N. G. HUTCHESON, Clerk.

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October 21, 1960.

Mr. James W. Blanks,
Attorney at Law,
Clarksville, Virginia.

Mr. John Y. Hutcheson,
Attorney at Law,
Boynton, Virginia.

Re: A. S. Owen etc. v. S. L. Blanton et al.

Gentlemen:

After looking into the caption matter it is my opinion that the demurrers should be overruled and the case set for hearing on its merits.

Mr. Hutcheson will please draw the proper order giving

Mr. Blanks time to file his answer or other pleadings if he is so advised.

Very sincerely,

G. E. MITCHELL, JR.

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**DEMURRER NUMBER TWO OF MARGARET NICHOLS
BLANTON AND S. L. BLANTON.**

Comes now Margaret Nichols Blanton and S. L. Blanton, by Counsel, and say that the bill filed as amended in this cause is not sufficient in law for the following reasons:

1. The Bill in Chancery shows on its face that suit was not instituted within the time prescribed by Section 43-17 or 43-22 of the Code of Virginia, as present amended.

2. That in filing the lien set forth in the Bill in Chancery the plaintiff did not comply with Sections 43-4, 43-7, 43-8, 43-9, 43-10, 43-11 and 43-12 of the Code of Virginia, or either of them, in that the lien as filed did not set forth the record owner of the property which the bill attempts to subject to the lien.

3. The suit is filed by a materialman and does not allege that the owner is indebted to the general contractor.

4. The bill shows on its face that the real estate which the bill attempts to subject to the lien stands in the name of S. L. Blanton and Margaret Nichols Blanton, tenants by the entireties with the right of survivorship between them, and the lien upon which suit was brought is solely against S. L. Blanton, and property held by tenants by the entireties cannot be subjected to the lien solely against one of the tenants.

Filed 12/14/60.

G. E. M., JR., Judge.

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DECREE.

This cause came on this day to be heard upon the bill filed by the plaintiff; the due return of process thereon; the demurrer of Margaret Nichols Blanton and S. L. Blanton; the demurrer of Farmers Bank of Boydton; the motion of the plaintiff to amend his bill by changing Paragraph 4 thereof to read as follows: "4. That the said materials were used by the said S. L. Blanton in the erection and construction of the said building located on real estate standing in the name of S. L. Blanton and Margaret Nichols Blanton as tenants by the entireties with the right of survivorship between them as at common law, which they have agreed to sell Harold Lokken, as follows:

All of that certain lot of land in Chase City District, Mecklenburg County, Virginia, being four lots Nos. 35, 36, 37, & 38, Block C of the Meadow Brook Subdivision, and being the same land conveyed by deed of Terry Lee White, widow, to S. L. Blanton and Margaret Nichols Blanton, dated July 21, 1959, recorded in D. B. 167, P. 527.";

demurrer number two of S. L. Blanton and Margaret Nichols Blanton, and was argued by counsel.

And there being no objection, it is adjudged, ordered and decreed that the bill filed by the plaintiff be, and the same is amended in accordance with the motion made.

UPON CONSIDERATION WHEREOF, the Court being of the opinion that all demurrers filed in this cause are without merit, doth adjudge, order and decree that each of them be, and they are hereby overruled, to which action of the Court the said defendants excepted. Whereupon the said defendants, S. L. Blanton and Margaret Nichols Blanton page 15 } and Farmers Bank of Boydton, by counsel, stated in open Court that they relied on their demurrers and their exception to the ruling of the Court and would offer no defense in this action. Accordingly, the Court being of the opinion that the prayer of the plaintiff's bill should be granted, and the real estate herein described should be subjected to the lien of the plaintiff's mechanic lien, also herein described, it is adjudged, ordered and decreed that unless the defendants, or someone for them, pay to the plaintiff or his attorney within fifteen (15) days after the entry of this decree the sum of \$769.60 with interest thereon from October 5, 1959, until paid, and the cost of this action, that John Y. Hutche-

son and James W. Blanks, who are hereby appointed Special Commissioners for the purpose, do offer the real estate herein described for sale at public auction to the highest bidder, and the terms of the sale shall be for cash. The sale shall be advertised for fifteen (15) days by handbills posted in at least three (3) public places within the County of Mecklenburg, Virginia. But the Special Commissioners shall not act under this decree until they have posted a bond, with surety thereon to be approved by the Clerk of this Court, in the penalty of \$1,500.00, conditioned according to law.

The said defendants signifying their intention to apply to the Supreme Court of Appeals for an appeal from this decree, the execution of this judgment is suspended for four months, upon the execution of a bond by the defendants within twenty-one (21) days of this decree in the amount of \$1,000.00, with approved surety.

Enter:

G. E. M., JR., Judge.

Date: 12/14/60.

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ASSIGNMENT OF ERROR.

S. L. Blanton and Margaret Nichols Blanton assign the following errors to the entry of decree on the 14th day of December, 1960.

FIRST: The Court committed error in overruling the demurrers filed by the appellants in holding that the mechanic's lien in this cause was a valid and enforceable lien against the appellants' real estate.

SECOND: The Court committed error in overruling the second demurrer filed by the appellants in holding that the mechanic's lien filed herein was a valid and enforceable lien against real estate of the appellants, and in holding that the mechanic's lien can be enforced against the property owned

by tenants by entireties with the right of survivorship under a lien against one of the tenants.

S. L. BLANTON
MARGARET NICHOLS BLANTON
By Counsel.

JAMES W. BLANKS, Attorney
for the Appellants
Clarksville, Virginia.

I certify that I mailed a true copy of the foregoing assignment of error on the 16th day of December, 1960, to John Y. Hutcheson, Esquire, attorney for the plaintiff and F. C. Bedinger, Esquire, attorney for Farmers Bank of page 18 } Boydton, they being all counsel of *of* record.

JAMES W. BLANKS,
Attorney for the Appellants,
Clarksville, Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

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