

**SUMMARY OF
TRICO SURVEYING, INC. V. GODLEY AUCTION COMPANY, INC.**

431 S.E.2d 565 (SC 1993)

by

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Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

A realtor had a contract to purchase property for development. A survey practitioner entered into a contract with the realtor to map wetlands in contemplation of development. At the completion of the mapping service, the practitioner's fees were \$21,800. The realtor refused to purchase the property and consequently refused to pay the practitioner. The practitioner filed a mechanic's lien against the owner (would be seller) of the property. The landowner sought summary judgment against the practitioner seeking to remove the lien and compensate him for costs and attorney fees. The trial court determined the lien was improper under the circumstances and awarded the landowner attorney fees and costs. The appellate court affirmed the trial court. The Court found:

1. The practitioner never entered into a contract with the land owner or informed the land owner of their services or intent to file a lien if the fee was not paid. Under South Carolina law the owner must agree to the services in order for a mechanics' lien to be placed on the property. Acquiescence or knowledge alone was not deemed to be sufficient to show an agreement.
2. South Carolina law provides that the successful party in litigation involving the validity of a mechanics' lien will have their costs and attorney's fees paid by the loser up to the amount of the lien. (Note: It actually cost the landowner \$27,999.03 to litigate the validity of the mechanics lien. As a consequence, it appears the landowner was still required to pay over six thousand dollars to remove the lien resulting from the realtor's failure to pay the practitioner.)

The practitioner can learn several points from this case:

1. Breach of a valid contract is considered by many sophisticated business men and women to be a business decision and not a criminal act. As a consequence, the practitioner should always contemplate this possibility as part of their business dealings. Fees

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for professional services should not be allowed to exceed the point where they represent a sizable portion of earnings. As a rule, fees should never be allowed to exceed the amount that may be sought in small claims court unless there is undisputed collateral that will cover the amount of the fees. Furthermore, even when there is undisputed collateral that will cover the fee, the collateral for all intent and purpose is worthless if the cost to litigate equals or exceeds the amount sought.

2. Whenever there is a possibility to use a mechanics' lien and the practitioner is not working directly for the landowner or their designated agent, the practitioner should seek to include the landowner in the agreement. Many states require a person that intends to use a mechanics' lien notify the landowner of their intent at the time an agreement is made with a third party.
3. A practitioner should always retain possession of their work products until compensation or a negotiable instrument (e.g., check or promissory note) is received. In this case, the practitioner allowed the realtor to have possession of the map before they were paid.
4. Even after a practitioner has been paid, the practitioner should take steps to limit the use of their work products by other persons. In this case, copies of the map were given to and subsequently used by other realtors.