

CHAPTER 85

ENFORCEMENT OF STATUTORY LIENS

- 85.011 Enforcement by persons in privity with the owner.
- 85.021 Enforcement by persons not in privity with the owner.
- 85.031 Remedies against personal property only; all lienors.
- 85.041 Joinder.
- 85.051 Time of bringing action.

85.011 Enforcement by persons in privity with the owner.—All liens on real or personal property provided for by part I or part II of chapter 713 are enforceable by persons in privity with the owners, except when otherwise provided, as follows:

(1) **RETENTION OF POSSESSION.**—By retention of possession of the property on which the lien has attached for a period of not exceeding 3 months by the person entitled to the lien, if the person was in possession at the time the lien attached.

(2) **BY ACTION IN CHANCERY.**—By an action in chancery, however this is the exclusive remedy for enforcement of liens on the separate statutory property of married women and against estates by the entreties.

(3) **ORDINARY ACTION AT LAW.**—By an ordinary action at law and levy of the execution obtained therein on the property on which the lien is held.

(4) **SPECIAL ACTION AT LAW.**—By an action at law in which the complaint shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property and demand that the property be sold to satisfy the lien. The judgment for plaintiff is a personal judgment against defendant as well as a lien on the property, which it shall describe, and shall direct execution against the property, as well as against the property generally of defendant.

(5) **SUMMARY ACTION.**—

(a) By a person claiming a lien for labor performed, or claiming a landlord's lien under s. 713.691, filing in the court having jurisdiction of the amount of the lien claimed, a complaint describing the property on which a lien is claimed and stating the facts which authorize or create the lien. Such person is entitled to the summary procedure under s. 51.011.

(b) If the issues are found for plaintiff, judgment shall be entered for the amount found to be due him or her with 15 percent attorney's fee and costs. The judgment is a prior lien on the property described in the petition over all other liens accruing or that may be filed subsequent to the day the lien for such labor performed or unpaid rent accrued, but if such issues are found for defendant, judgment shall be entered dismissing the action.

History.—RS 1744; s. 13, ch. 5143, 1903; GS 2212; RGS 3519; s. 1, ch. 12079, 1927; CGL 5382; s. 2, ch. 29737, 1955; s. 15, ch. 63-559; s. 37, ch. 67-254; s. 9, ch. 73-330; s. 455, ch. 95-147.

Note.—Former ss. 86.01-86.06.

85.021 Enforcement by persons not in privity with the owner.—A person not in privity with the owner may resort to any of the remedies prescribed by s. 85.011.

The judgment may provide for the recovery from the contractor or other person for whom the labor or material was furnished, if the contractor or other person is joined in the action, of the amount due by him or her, and from the owner of the amount due by the owner to the contractor or other person as aforesaid, at the time of the service of the notice provided for by s. 713.75 of part II of chapter 713, as well as enforce the lien against the property of such owner for such amount, but only one satisfaction of the judgment shall be had. Although no lien is found to exist and no judgment rendered against the owner, judgment may be rendered against the contractor or other person for whom the labor or materials were furnished for the amount due by him or her.

History.—RS 1744; s. 15, ch. 5143, 1903; GS 2213; RGS 3520; CGL 5383; s. 37, ch. 67-254; s. 456, ch. 95-147.

Note.—Former s. 86.07.

85.031 Remedies against personal property only; all lienors.—

(1) **BY INJUNCTION AND ATTACHMENT.**—If any person entitled to a lien under part II of chapter 713 on personal property has reason to believe that it is about to be removed from the county in which it is, the person may enjoin its removal in the manner provided for enjoining the removal of property subject to a mortgage or, if the lien has been perfected, may attach it in the manner provided for attachment in aid of foreclosure of mortgages.

(2) **BY SALE WITHOUT JUDICIAL PROCEEDINGS.** When any person entrusts to any mechanic or laborer, materials with which to construct, alter, or repair any article of value, or any article of value to be altered or repaired, and if the article is completed and not taken away, and the reasonable charges not paid, such mechanic or laborer may sell it after 3 months from the time such charges become due at public auction for cash but before the sale the mechanic or laborer shall give public notice of the time and place thereof, by notices posted for 10 days in 3 public places in the county, one of which shall be at the courthouse, and another in some conspicuous part of his or her shop or place of business. The proceeds of the sale, after payment of charges for construction or repair with the costs of the sale, shall be deposited with the clerk of the circuit court for the county, if the owner is absent, where they shall remain subject to the order of the person legally entitled thereto. The clerk shall be entitled to receive 5 percent on the proceeds for the care and disbursement thereof. Any person claiming a lien under s. 713.65, of part II of chapter 713, may enforce it by sale without judicial proceedings in the manner set forth herein after 1 month after the time the charges for which a lien is claimed become due.

History.—RS 1745; GS 2214; RGS 3521; CGL 5384; s. 2, ch. 25048, 1949; s. 1, ch. 57-94; s. 37, ch. 67-254; ss. 24, 35, ch. 69-106; s. 1, ch. 70-89; s. 2, ch. 79-244; s. 457, ch. 95-147.

Note.—Former s. 86.08.

85.041 Joinder.—All persons who have liens under part I or part II of chapter 713, may join to enforce their respective liens.

History.—s. 14, ch. 5143, 1903; GS 2224; RGS 3531; CGL 5394; s. 37, ch. 67-254.

Note.—Former s. 86.10.

85.051 Time of bringing action.—When there has been no record of a notice of lien, action to enforce a lien

(if it exists without such record) must be brought within 12 months from the accrual of the unpaid rent, the performance of the work, or the furnishing of the materials, and if there has been such record, the action must be brought within 12 months from the time of such record.

History.—RS 1748; s. 18, ch. 5143, 1903; GS 2223; RGS 3530; CGL 5393; s. 37, ch. 67-254; s. 10, ch. 73-330.

Note.—Former s. 86.11.