

03-1549-CD - - -
D. CHARLES DETTCH vs. KEN WELLS EXCAVATING, LLC

03-1549-C

FILED

OCT 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

WAIVER OF RIGHT TO FILE MECHANICS' LIEN

KNOW ALL MEN BY THESE PRESENTS, that D. CHARLES DEITCH, of R.R. #1, Box 353, DuBois, Clearfield County, Pennsylvania 15801 ("Owner"), and KEN WELLS EXCAVATING LLC, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office located at R.D. #3, Box 344A, Reynoldsville, Jefferson County, Pennsylvania 15851 ("Contractor"), have entered into a Construction Agreement dated July 16, 2003, ("Contract") relating to the construction of a building and other improvements upon the following described premises as part of the consideration for which agreement this Waiver of Liens is given:

ALL that certain piece, parcel or tract of land lying and being situate in Brady Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an existing rebar set by previous survey on the eastern Right-of-Way for S.R. 4010 (33' R/W), said rebar being the southwest corner of lands now or formerly of Michael Lyons, et al. (Instrument No. 200205872, dated April 16, 2002), and being the northwest corner of the herein described parcel;

thence North 89° 41' 05" East along lands now or formerly of Michael Lyons, et al. (Instrument No. 200205872, dated April 16, 2002), a distance of 249.95 feet to an existing rebar set by previous survey, and being the southeast corner of lands now or formerly of Michael Lyons, et al. (Instrument No. 200205872, dated April 16, 2002);

thence, North 00° 31' 54" West along lands now or formerly of Michael Lyons, et al. (Instrument No. 200205872, dated April 16 2002), a distance of 250.01 feet to an existing rebar set by previous survey, and being the northeast corner of lands now or formerly of Michael Lyons, et al. (Instrument No. 200205872, dated April 16, 2002);

thence, North 89° 35' 51" East along lands now or formerly of F. Douglas and Tonda Beard (Instrument No. 200015668, dated September 13, 2000), a

distance of 218.23 feet to a rebar set by this survey, and being the northeast corner of the herein described parcel;

thence, South 00° 24' 09" East through lands now or formerly of Gerard and Ruth A. Paulinellie (Deed Book 794, Page 466, dated February 2, 1980), a distance of 535.31 feet to a rebar set by this survey, and being the southeast corner of the herein described parcel;

thence, South 89° 29' 27" West through lands now or formerly of Gerard and Ruth Paulinellie (Deed Book 735, Page 245, dated February 14, 1977), a distance of 467.22 feet to a rebar set by this survey on the eastern Right-of-Way for S.R. 4010 (33' R/W), and being the southwest corner of the herein described parcel;

thence, North 00° 28' 59" West along the eastern Right-of-Way for S.R. 4010 (33' R/W) a distance of 286.55 feet to the place of beginning.

CONTAINING 187,869 square feet or 4.31 acres and being known as Parcel A on the Partition of Land for Gerard & Ruth A. Paulinellie, dated August 20, 2003, and referenced as Job No. JN2490-03, on survey plat prepared by Alexander & Associates, Inc., a copy of which is filed in the mapping records of the Office of the Register and Recorder of Clearfield County, Pennsylvania, as Instrument No. 200318117.

The above-description was prepared by Lional Alexander, Professional Land Surveyor, in accordance with a survey performed by Alexander & Associates, Inc. as referenced above.

EXCEPTING AND RESERVING all of the coal, gas, oil and other minerals as reserved in prior deeds.

UNDER AND SUBJECT to all exceptions, reservations and restrictions which may appear in the recorded chain of title.

NOW, THEREFORE, Contractor, intending to be legally bound hereby, in consideration of the sum of One Dollar (\$1.00) to Contractor in hand paid, the receipt and sufficiency of which are hereby acknowledged, as well as for and in consideration of the entry by Owner into the Contract, does hereby, for Contractor and any and all subcontractors, materialmen and parties acting for, through or under Contractor, them or any of them, or

anyone, covenant and agree with Owner that no mechanics' liens or claims shall be filed or maintained by Contractor, them or any of them, or any one, against the above-described real estate, or the buildings or other improvements erected or to be erected thereon, or any of them, or the estate (including a leasehold estate), interest or title thereto of Owner, for or on account of any work done or materials furnished under the Contract or under any supplemental contract, verbal or written, or contract for extra work relating to the construction and completion of said buildings or other improvements, or any of them, or otherwise; and Contractor, for Contractor and any and all subcontractors, materialmen and parties acting through or under Contractor, them or any of them, hereby expressly waives and relinquishes the right to have, file or maintain any mechanics' liens or claims against said real estate or buildings or other improvements or any of them.

Contractor hereby covenants, promises and agrees that all subcontractors, material suppliers, and laborers on the work shall look to and hold Contractor personally liable for all subcontracts, materials furnished and work and labor done, so that there shall not be any legal or lawful claim of any kind whatever against Owner, or any other person with an estate (including a leasehold estate) in the above-described property, for any work done or labor or materials furnished under the Contract or otherwise.

This agreement waiving the right of lien shall be an independent covenant and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in the construction and completion of the addition to the existing building or other improvements as to any work and labor done and materials furnished

under the Contract aforesaid.

Contractor hereby represents and warrants that prior to the date hereof no work has been done and no materials have been furnished with regard to the construction which is the subject of the Contract or with regard to any supplemental contract, verbal or written, or contract for extra work in or about the construction and competition of any buildings or other improvements on the above-described property.

In order to give Owner and any person having an estate in the above-described property (including a leasehold estate), full power and authority to protect itself and themselves, the above-described property, the buildings or other improvements to be constructed thereon, and the curtilages appurtenant thereto, against any and all liens or claims filed by the Contractor or anyone acting under or through it in violation of the foregoing covenant by Contractor, the Contractor hereby irrevocably authorizes and empowers any attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania, to appear as attorney for it, them, or any of them, in any such Court, and in its or their name or names, (a) to the extent permitted by law, to mark satisfied of record at the cost and expense of Contractor or of any subcontractor, laborer or material supplier, any and all claims or liens filed in violation of the foregoing waiver and covenant, or (b) to cause to be filed and served in connection with such claims or liens (in the name of Contractor or any subcontractor, laborer or material supplier, or anyone else acting under or through it) any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, to incorporate therein, as part of the record the waiver contained in this instrument, and for such act or acts this instrument shall be good and

sufficient warrant and authority, and a reference to the court, term and number in which and where this Waiver of Liens shall have been filed shall be a sufficient exhibit of the authority herein contained to warrant such action, and the contractor for itself and for them does hereby remise, release and quitclaim all rights and all manner of errors, defects and imperfections, whatsoever in entering such satisfaction or in filing such pleading, instrument or amendment, or in any way concerning them.

This agreement and Waiver of Liens is made and intended to be filed with the Prothonotary of the Court of Common Pleas of the County of Clearfield, Commonwealth of Pennsylvania, or other proper place in which the above-described lands are located, within ten (10) days after the date hereof in accordance with the requirements of law in such case provided.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 9th day of October, 2003.

WITNESS:

Raven Walker

OWNER:

D. Charles Deitch (SEAL)
D. Charles Deitch

ATTEST:

Linda Jo Wells
By Linda Jo Wells, Manager

CONTRACTOR:
KEN WELLS EXCAVATING LLC.

Kenneth R. Wells
By Kenneth R. Wells, Manager