

05-503-CD

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David McClellan et al v. Eric Raley et al

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FILED

Atty. Wendekier

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01/23/05 B&B

APR 11 2005

2 CC Atty

William A. Shaw
Prothonotary/Clerk of Courts

MECHANIC'S LIEN WAIVER

Made this 6th day of April, 2005.

FROM DAVID G. MCCLELLAN, trading and doing business as DAVID G. MCCLELLAN REMODELING, having an office at P.O. Box 57, Glasgow, Pennsylvania 16644, hereinafter referred to as a "CONTRACTOR",

TO

ERIC RALEY and MELISSA RALEY, husband and wife, of 1667 Union Street, Box 22 - E, Coalport, Pennsylvania 16627, "OWNERS".

RECITALS:

1. CONTRACTOR has contracted with OWNERS by contract dated March 3, 2005, referred to as ("CONTRACT") to provide all materials and perform all labor necessary for construction of an addition to a single family house located at 1667 Union Street, Coalport, Beccaria Township, Clearfield County, Pennsylvania 16627, the PROPERTY, which is described on the attached Schedule "A".
2. CSB BANK (hereinafter referred to as the "BANK"), has agreed and committed to provide a mortgage loan in the sum of SIXTY FIVE THOUSAND AND 00/100 DOLLARS (\$65,000.00) to OWNERS. This sum is to be advanced by BANK as required by OWNERS and/or as the work progresses.

MECHANIC'S LIEN WAIVER:

NOW THEREFORE, intending to be legally bound, it is stipulated and agreed to as follows:

1. CONTRACTOR, for itself and anyone else acting or claiming through or under it, for and in consideration of the CONTRACT and the considerations stated

within the CONTRACT, and intending to be legally bound by this MECHANIC'S LIEN WAIVER, does waive and relinquish all right to file a mechanic's lien, claim or notice of intention to file any lien or claim, and does covenant, promise and agree that no mechanic's lien or claim or other lien or claim of any kind shall be filed or maintained against the improvements or the estate or the title of the OWNERS, their heirs, successors or assigns, in the PROPERTY or the curtilage or curtilages appurtenant thereto, or against any right, title or interest of OWNERS, their heirs, successors, or assigns, by or in the name of the CONTRACTOR or any subcontractors, materialmen or laborers for work done or materials furnished under the CONTRACT or by any other party acting through or under them or any of them for or about the improvements or the PROPERTY or any part thereof, or on credit thereof, and that all subcontractors, materialmen, 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 against OWNERS, their heirs, successors or assigns for any subcontracts, and materials and work done and labor furnished under the CONTRACT for and about the work to construct the addition as set forth above under any contract for extra work, or for work supplemental thereto, or otherwise.

2. This agreement waiving the right of liens shall be an independent covenant and shall operate and be effective with respect to work done and materials furnished under any supplemental contract for extra work as well as to any work and labor done and materials furnished under the CONTRACT.
3. In the event that a CONTRACTOR consists of more than one person, firm or corporation, the undertakings hereunder of such persons, firms or corporations shall be joint and several. For purposes of this MECHANIC'S LIEN WAIVER, the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and the feminine, as the context may require.
4. In the event that any mechanic's lien or claims filed by a CONTRACTOR or any person, firm or corporation claiming under, through or against a CONTRACTOR, CONTRACTOR, for itself and all such persons, firms and corporations, irrevocably waives any right to a jury trial in any action to strike or discharge the lien.
5. If a CONTRACTOR or any person, firm or corporation claiming under, through or against the a CONTRACTOR files a mechanic's lien, notwithstanding this waiver, OWNERS, their heirs, successors or assigns, and BANK, its successors and assigns shall each have the right to discharge the lien by appropriate legal proceedings and to retain out of any payment then due or thereafter to become due to such CONTRACTOR, an amount sufficient to

completely reimburse and indemnify OWNERS, their heirs, successors and assigns, BANK, its successors and assigns against all expenses and losses resulting from such liens. Such expenses and losses shall include, without limitation, any attorney's fees, surety bond premiums and other costs incurred in attempting to discharge or remove such lien, and any damages or other losses resulting from such lien, all of which such CONTRACTOR agrees to pay. If any payment then due to such CONTRACTOR by OWNERS, is not sufficient to reimburse and indemnify OWNERS their heirs, successors or assigns, and BANK, its successors and assigns by way of off-set, such CONTRACTOR agrees to pay the amount of the difference to OWNERS, their heirs, successors or assigns, or BANK, its successors and assigns, as the case may be, upon demand.

6. CONTRACTOR agrees to release any and all liens for all work done, and materials and supplies of any kind that have been delivered or ordered, in connection with the construction of the addition, other work or installation with regard to the addition to the house and any right to file for such liens, which have or may have attached prior to the execution of this MECHANIC'S LIEN WAIVER.

7. In addition, CONTRACTOR further agrees that all provisions of this MECHANIC'S LIEN WAIVER shall apply to the release of any and all mechanic's, materialmen's and any and all other liens, and the right to file such liens, which have attached to the PROPERTY, buildings, or otherwise, prior to the execution of this MECHANIC'S LIEN WAIVER, as those provisions apply to the waiver of any and all mechanic's liens.

8. This agreement and stipulation is made and is intended to be filed with the Clearfield County Prothonotary within ten (10) days of the date of this MECHANIC'S LIEN WAIVER, in accordance with the authority granted by the ACT of August 24, 1963, P.L. 1175, SECTION 405, 49 P.S. SECTION 1402.

IN WITNESS WHEREOF, the undersigned have signed, sealed and delivered this MECHANIC'S LIEN WAIVER as of the date first written above.

CONTRACTOR:
DAVID G. MCCLELLAN, t/d/b/a
DAVID G. MCCLELLAN REMODELING

MECHANIC'S LIEN WAIVER By: DAVID G. McClellan (SEAL)
Witness DAVID G. MCCLELLAN, Contractor

ALL that certain piece or parcel of ground situate in Kratzer's Addition to the Village of Rosebud, Beccaria Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on Franklin Street at the southeast corner of the said piece of land, which said point is forty (40) feet distance from the southwest corner of lot No. 70 in said addition on a line running north eighty three (83) degrees west from said southwest corner to the southeast corner of this piece of ground, said lot No. 70 being known as one of the Shoff lots; then along Franklin Street north eighty three (83) degrees west one hundred and fifty (150) feet to a post; then north five (5) degrees fifty five (55) minutes east one hundred and fifty (150) feet to a post; then south eighty three (83) degrees east one hundred and fifty (150) feet to a post; then south five (5) degrees fifty five (55) minutes west one hundred and fifty (150) feet to a place of beginning, being three town lots each fifty (50) by one hundred and fifty (150) feet, and all containing 22,500 square feet.

THIS PARCEL OF LAND IS FURTHER IDENTIFIED ON THE CLEARFIELD COUNTY, PENNSYLVANIA TAX ASSESSMENT RECORDS AS TAX CONTROL NO. 1010-30143 AND TAX MAP NO. 1010-H17-415-00007

OWNERS:

Raymond G. Wendekier
Witness


ERIC RALEY

(SEAL)

Raymond G. Wendekier
Witness

Melissa Raley
MELISSA RALEY

(SEAL)

ACKNOWLEDGMENT

State of Pennsylvania |
| ss

County of Cambria |

On this the 6th day of April, 2005, before me, a notary public, the undersigned officer, personally appeared DAVID G. MCCLELLAN, t/d/b/a DAVID G. MCCLELLAN REMODELING, known to me (or satisfactorily proven), who acknowledged himself to be the person whose name is subscribed to the within instrument and acknowledged that he is authorized to execute the same by signing himself for the purposes contained therein.

In Witness Whereof, I hereunto set my hand and official seal.

(Seal)

Mary Ellen Wendekier

Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Mary Ellen Wendekier, Notary Public
Patton Boro, Cambria County
My Commission Expires Nov. 13, 2008

Member, Pennsylvania Association Of Notaries

State of Pennsylvania |
| ss

County of Cambria |

On this the 6th day of April, 2005, before me, a notary public, the undersigned officer, personally appeared ERIC RALEY and MELISSA RALEY, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes contained therein.

In witness whereof, I hereunto set my hand official seal.

(Seal)

Mary Ellen Wendekier
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Mary Ellen Wendekier, Notary Public
Patton Boro, Cambria County
My Commission Expires Nov. 13, 2008

Member, Pennsylvania Association Of Notaries