

05-951-CD

E. King et al vs Gary Luzier

2005-951-CD  
E. King et al v. Gary Luzier

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Edward D. King & Bertha M. CIVIL ACTION  
King, Owners (Plaintiff) / Defendants

4298 Golden Yoke Rd  
(Street Address)

Luthersburg, PA 15848  
(City, State ZIP)

No. 2005-951-CO

Type of Case: Civil

Type of Pleading: Waiver & Release  
of Mechanic's Lien

Filed on Behalf of:

vs.

Gary Luzier  
Contractor (Defendant) / Plaintiff  
451 Hatten Rd  
(Street Address)

Luthersburg, PA 15848  
(City, State ZIP)

(Plaintiff/Defendant) / Owners,  
Edward D. King & Bertha M.  
King

FILED

JUL 01 2005  
0/11:55 AM  
William A. Shaw

Prothonotary/Clerk of Courts

3 CENT TO ATTY

Mary L. Potnowen, Esq.  
(Filed by)

600 E. Main St.; PO Box 218  
(Address)  
Key Noltsville, PA 15851  
(814) 653-2243  
(Phone)

Mary L. Potnowen  
(Signature)

EDWARD D. KING and  
BERTHA M. KING,  
Owners/Plaintiffs/Defendants

v.

GARY LUZIER,  
Contractor/Defendant/Plaintiff

CONTRACTOR'S WAIVER AND RELEASE OF MECHANIC'S LIEN

This Agreement made and entered into as of this 13<sup>th</sup> day of June, 2005, by and between Edward D. King and Bertha M. King, hereinafter Owners/Plaintiffs/Defendants, of 4298 Golden Yoke Road, Luthersbur, Pennsylvania 15848, and Gary Luzier, hereinafter Contractor/Defendant/Plaintiff, of 451 Hatten Road, Luthersburg, Pennsylvania 15848:

WHEREAS it is the desire of the Owners/Plaintiffs/Defendants that the undersigned Contractor/Defendant/Plaintiff for himself and anyone else acting or claiming through or under him, waive or release any rights or claims that they may now have or may in the future have that are commonly known as Mechanics or Materialmens Liens or Claims on the premises described more particularly in Exhibit "A" attached hereto and made a part hereof.

1. That the undersigned Contractor/Defendant/Plaintiff, for value received, himself, the subcontractor, materialmen, their heirs, executors, administrators, assigns or anyone else acting or claiming through or under them intending to be legally bound do hereby waive or relinquish all right to file a Mechanics Lien, claim or Notice of Intention to any lien or claim and so hereby covenant, promise and agree that no Mechanics Lien or other line or claim of any kind whatsoever shall be filed or maintained against the improvements of the estate or title of the Owners/Plaintiffs/Defendants in the property or the curtilage or curtilages appurtenant thereto by or in the name of the Contractor/Defendant/Plaintiff or any other subcontractor, materialmen and laborer for work done and materials furnished under the contract or by any other party acting through or under them or any of them for and 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 the Contractor/Defendant/Plaintiff 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 whatsoever against the Owners/Plaintiffs/Defendants for any work done or labor or materials furnished under the contract for the erection, construction, completion of the improvements, or under any contract for any extra work or for work supplemental thereto or otherwise.

2. This Agreement waiving the right of the lien shall be an independent covenant and shall operate and be effective as well as in respect to work done and materials furnished under any supplemental contract for extra work in the erection, construction, and completion of the improvements under the contract. The Contractor/Defendant/Plaintiff for himself and anyone else acting or claiming through or under him, including all subcontractors,

materialmen or laborers hereby agree for themselves, their heirs, successors, administrators and assigns, to release all liens which they may now or hereafter may have on the premises described herein by reason of any materials furnished or yet to be furnished or work performed or yet to be performed by them or any person claiming under them for an towards the erection and construction of improvements on said premises.

3. The Contractor/Defendant/Plaintiff for himself, the subcontractors, materialmen, laborers or anyone else claiming or acting through or under them, including their heirs, administrators, executors and assigns do hereby agree to release and forever quitclaim and by these presents do remise, release and forever quitclaim to the Owners/Plaintiffs/Defendants, their heirs and assigns, all manner of liens, claims and demands whatsoever, including the right under Act of Assembly, entitled "An Act relating to the Lien of Mechanics and others upon buildings" approved August 24, 1963, and its amendments, to file or enter of record any Mechanics Lien or Liens against all that certain piece or parcel of land set forth in Exhibit "A", that any of them might have or could have had or may in the future have for any and all work done upon and materials furnished for dwelling house or other buildings on said lot or lots in the erection, building and completion thereof, or that may hereafter be done or furnished on the same, so that the said owner or owners and his, her or their heirs and assigns shall and may hold, have and enjoy the said building, lot of ground and premises free and discharged from all liens, claims and demands whatsoever which Contractor/Defendant/Plaintiff may have or could or might have against the same as if these presents had not been made.

4. It is the desire of the parties hereto that all benefits of this Agreement shall inure not only to the Owners/Plaintiffs/ Defendants, but also to any Mortgagees.

5. This Agreement shall be binding upon the parties hereto as well as any person claiming under them in regard to the erection, construction or completion of any improvements that have been erected or will be erected on the premises that are described more particularly in Exhibit "A", attached hereto and made a part hereof.

6. This Agreement shall be filed in the Prothonotary's Office of Jefferson County, Commonwealth of Pennsylvania, in accordance with the Mechanics' Lien Act of 1963 and it is the express intent of the parties to be legally bound hereby in accordance with the provision of the Mechanics' Lien Act of 1963.

7. By executing this Agreement, the Owners/Plaintiffs/Defendants do hereby certify that either no work has been performed or materials have been supplied by any person, partnership or corporation, that would entitle that person, partnership or corporation, at this time or in the future to file any Mechanics Lien or claim against the premises or in the alternative of any person, partnership or corporation may, prior to the execution of this Agreement, have the right or in the future will have the right to file a Mechanics Lien or claim, that any such right has been extinguished and terminated by the execution of this Agreement and that all persons, partnerships or corporations shall be prevented from maintaining or filing any Mechanics Lien or claim by virtue of the fact that they have executed this Agreement or some other party has executed this Agreement, and they would be prevented from filing or maintaining any Mechanics Lien or claim as a result of that party's execution of this Agreement.

WITNESS the due execution hereof and intending to be legally bound hereby that as of at least one day before any labor or materials have been provided for the improvements to the premises.

Witness:

Mary A. Potnowe

Mary A. Potnowe

Mary A. Potnowe

Gary L. Luzier

Gary Luzier, Contractor/Defendant/Plaintiff

Edward D. King

Edward D. King, Owner/Plaintiff/Defendant

Bertha M. King

Bertha M. King, Owner/Plaintiff/Defendant

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF JEFFERSON

:

On this, the 16<sup>th</sup> day of June, 2005, before me, the undersigned officer, a notary public, personally appeared Edward D. King and Bertha M. King, Owners, known to me (or satisfactorily have proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jodi A. Anderson  
Notary Public

My Commission Expires:  
4/22/07

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Jodi A. Anderson, Notary Public

Reynoldsville Boro, Jefferson County

My Commission Expires Apr. 22, 2007

Member, Pennsylvania Association Of Notaries

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF JEFFERSON

:

On this, the 13<sup>th</sup> day of June, 2005 before me, the undersigned officer, a notary public, personally appeared Gary Luzier, known to me (or satisfactorily has proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jodi A. Anderson  
Notary Public

My Commission Expires:  
4/22/07

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Jodi A. Anderson, Notary Public

Reynoldsville Boro, Jefferson County

My Commission Expires Apr. 22, 2007

Member, Pennsylvania Association Of Notaries

## EXHIBIT "A"

**ALL** that certain piece of land situated in Union Township, Clearfield County, Commonwealth of Pennsylvania, containing 34.05 acres and excepting and reserving 2.57 acres and being 31.48 acres and shown on a plat map attached hereto and made a part of this document and bounded and described as follows:

BEGINNING at a 1" iron pipe set at a northeastern corner of the land herein described, said iron pipe also being the northwestern most corner of the land of Gwen M. King and said iron pipe also being S60°-16'W, 522.1 feet from a 1" iron pipe set at the northern most corner of Gwen M. King and running:

1. Thence, S32°-37'E, 370.7 feet along the land of Gwen M. King to a 1" iron pipe set at a northeastern corner of the land herein described;
2. Thence, N77°-09'E, 109.6 feet along the land of Gwen M. King to a point at a northeastern corner of the land herein described;
3. Thence, N87°-40'E, 78.2 feet along the land of Gwen M. King to a point at a northeastern corner of the land herein described;
4. Thence, S86°-37'E, 64.5 feet along the land of Gwen M. King to a 1" iron pipe set at the southeastern most corner of the land of Gwen M. King, the northwestern most corner of the land of Donald Michael and the northeastern most corner of the land herein described;
5. Thence, S12°-27'W, 354.7 feet along the land of Donald Michael to a point on the northern most right of way line of the land now or formerly of the Clearfield & Mahoning Railway Company at a southeastern corner of the land herein described;
6. Thence, the following courses and distances along the northern most right of way line of the land now or formerly of the Clearfield & Mahoning Railway Company:
  - a. S88°-09'W, 155.3 feet to a point;
  - b. S80°-28'W, 131.1 feet to a point;
  - c. S72°-17'W, 160.0 feet to a point;
  - d. S64°-36'W, 80.2 feet to a point at a southeastern corner of the land herein described;
7. Thence, SOUTH, 587.5 feet along and crossing through the land now or formerly of the Clearfield & Mahoning Railway Company and then along the land of E.M. Brown to a 1" iron pipe set at the southeastern most corner of the land herein described;
8. Thence, WEST, 1,130.3 feet along the land of Galen Conrad and then along and through the land now or formerly of the Clearfield & Mahoning Railway Company and then along the land of Galen Conrad to an existing 1" iron pin found at the southwestern most corner of the land herein described;

9. Thence, NORTH, 963.4 feet along the land of Beverly J. Beard to an existing 1" iron pin found at the northwestern most corner of the land herein described;

10. Thence, N 81°-00'E, 280.5 feet along the land of Beverly J. Beard to a 1" iron pipe set at a northwestern corner of the land herein described;

11. Thence, S85°-00'E, 277.5 feet along the land of Beverly J. Beard to a 1" iron pipe set at a northwestern corner of the land herein described;

12. Thence, N58°-30'E, 676.5 feet along the land of Beverly J. Beard to a 1" iron pipe set at the northern most corner of the land herein described;

13. Thence, SOUTH, 82.5 feet along the land of Beverly J. Beard to a 1" iron pipe set at a northeastern corner of the land herein described;

14. Thence, N60°-16'E, 157.4 feet along the land of Beverly J. Beard to a 1" iron pipe set at the northeastern corner of the land herein described, said iron pipe also being the northeastern most corner of the land of Gwen M. King and the Point of Beginning.

All bearings have been rounded to the nearest minute and all distances have been rounded to the nearest tenth of a foot. Overall comparisons of bearing assignments of record and/or previous or adjoining surveys may reveal different bearing assignments for common lines of boundary. Differences are due to different bearing bases utilized.

This suggested deed description was written from data secured from a survey made on the premises May 19, 2003 by Thomas M. Gusky, P.L.S., as shown on Plat Map prepared by him for Edward D. King and Bertha M. King and being filed concurrently with this Deed in the Office of the Recorder of Deeds of Clearfield County.

BEING the same realty described in a Deed from Edward D. King and Bertha M. King, husband and wife, and Gwen M. King, single, said Deed dated March 4, 2005 and recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument Number 200503226.