

05-1270-CD

Stacey M. Constable et al vs Thomas McCloskey

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2005-1270-CD

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Stacey M. Constable

Joshua D. Constable,

~~(Plaintiff)~~ owners

8315 Devils Den Lane

(Street Address)

Mechanicsville VA 23111

(City, State ZIP)

CIVIL ACTION

No. 05-1270-CD

Type of Case: ~~Writ~~ Civil - WML

Type of Pleading: Waiver of Mechanics Lien

VS.

Thomas M. McCluskey

~~(Defendant)~~ Contractor

241 Treason Lake

(Street Address)

DuBois PA 15801

(City, State ZIP)

Filed on Behalf of:

Stacey M. Constable, Joshua D. Constable
(Plaintiff/Defendant) Owners

Christopher E. Mohrney, Esq.
(Filed by)

90 Beaver Drive Suite 111B
(Address) DuBois PA 15801

814-375-1044
(Phone)

(Signature)

FILED NOCC

01:17 PM AUG 22 2005 20.00

William A. Shaw
Prothonotary/Clerk of Courts

CONTRACTOR'S WAIVER OF LIENS

THIS AGREEMENT made and entered into this August 19, 2005 by and between Joshua D Constable and Stacey M Constable, hereinafter "Owner(s)", of Lot # 84 Sylvan Heights, DuBois, PA 15801, and Thomas M. McCloskey, hereinafter "Contractor" of 241 Treasure Lake, DuBois, PA 15801.

See Exhibit "A" which is attached hereto, incorporated herein, and made a part hereof as though fully set forth herein.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, the parties do agree as follows:

1. The Contractor for himself and anyone else acting or claiming through or under him, intending to be legally bound hereby, does hereby waive and relinquish all right to file a mechanics' lien, claim or notice of intention to file any lien or claim, and does hereby covenant, promise and agree that no mechanics' lien or claim or other lien or claim of any kind whatsoever shall be filed or maintained against the improvements or the estate or the title of the Owner in the Property or the curtilage or curtilages appurtenant thereto, by or in the name of the Contractor or any subcontractor, 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 and about the improvements or the Property or any part thereof, or on credit thereof, and that all subcontractors, materialmen and laborers on the works shall look to and hold Contractor personally liable for all subcontractors, materials furnished and work and labor done, so that there shall not be any legal or lawful claim of any kind whatever against Owner for any work done or labor or materials furnished under the Contract for and about the erection, construction and completion of the improvements or under any contract for extra work, or for work supplemental thereto, or otherwise.
2. The Contractor does hereby remise, release and waive for himself, subcontractor and materialmen the right under the Act of Assembly entitled the Mechanics' Lien Act of 1963 to file or enter on record any Mechanics' Lien or Liens against ALL that certain piece, parcel or lot of ground situate in the Township of Sandy, County of Clearfield, State of PA.
3. 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 erection, construction and completion of the improvements as to any work and labor done and materials furnished under the Contract.
4. In the event Contractor consists of more than one person, firm or corporation, the undertakings hereunder of each of such persons, firms or corporations shall be joint and several, and the word "Contractor" shall mean all or some or any of them. For purposes of this Agreement, the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and feminine, as the context may require. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby do execute this Agreement the day and year first above written.

Witness:

McCloskey Homes Inc.

By:

Thomas M. McCloskey (SEAL)
Thomas M. McCloskey

Joshua D. Constable (SEAL)
Owner: Joshua D. Constable

Stacey M. Constable (SEAL)
Owner: Stacey M. Constable

COMMONWEALTH OF PENNSYLVANIA :

ss.

COUNTY OF CLEARFIELD :

On this, the 19th day of Aug., 2005, before me, the undersigned officer, personally appeared Thomas M. McCloskey, known to me (or satisfactorily proven) to be the one of the persons whose names are subscribed to the within instrument, and acknowledged that he executed the same for the purposes herein contained.

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

Laura L. Emerick
Notary Public

NOTARIAL SEAL
Laura L. Emerick, Notary Public
DuBois, Clearfield County
My commission expires May 18, 2008

PROPERTY DESCRIPTION FOR
JOSHUA D. AND STACEY M. CONSTABLE
LOT #84 SYLVAN HEIGHTS

ALL that certain lot or parcel of ground situate, lying and being in Sandy Township, Clearfield County, Pennsylvania. Said property being known as Lot #84 in the former Schall Land Company Subdivision Plan dated July 12, 1994, surveyed by Lee-Simpson Associates, Inc., and which is more fully bounded and described as follows:

BEGINNING at a point in the right of way of Moravian Drive, said point being the Northwest corner of Lot No. 83 and the Northeast corner of Lot No. 84;

Thence South 20 degrees 32 minutes 54 seconds West along Lot No. 83, a distance of 184.66 feet to a point in the southern boundary line of the former Schall Land Company Subdivision Plan; Thence North 73 degrees 50 minutes 30 seconds West along said southern boundary line of the former Schall Land Company Subdivision Plan, a distance of 195.00 feet to a point; Thence North 42 degrees 40 minutes 21 seconds East along Lot No. 63, a distance of 233.38 feet to a point in the right of way of Moravian Drive; Thence South 60 degrees 35 minutes 28 seconds East along the right of way of Moravian Drive, a distance of 107.82 feet to the point and place of beginning. Being known as Lot No. 84 and CONTAINING 0.68 acre or 29,896 square feet.

EXCEPTING AND RESERVING therefrom and subject to:

1. All easements, rights of way, reservations, and limitations shown or contained in prior instruments of record and as recorded.
2. All coal, mining, mineral, oil and gas rights of every kind and nature.

UNDER AND SUBJECT, nevertheless, to the express conditions and restrictions as appear below which Grantees, for themselves, their heirs and assigns, by acceptance of this indenture, agree with the Grantors, their heirs and assigns, that said restrictions and conditions may be amended, expanded, or eliminated, either in part or in entirety from future conveyances by the Grantors from its lands:

1. Minimum Size of Home:
 - A. 2300 Sq. ft. Single Story, not including garage or porch; or
 - B. 2700 Sq. Ft. Two-story, not including garage or porch.
2. 50% brick or stone for front and sides;
3. Siding and shingles must be architectural grade;
4. All homes must have full basements;
5. Each home must have a minimum of a two car garage;
6. All homes must have multiple roof lines;
7. All homeowners and builders must follow formal blueprints;

8. All homeowners and builders must follow all federal, state and local codes when building their homes, performing landscaping and paving their driveways;
9. All landscaping and driveways must be completed within twelve (12) months of the start of construction of the home;
10. Any outbuildings or sheds constructed on the homeowner's property must be the same architectural design as the home constructed on the same site;
11. No outside wood or coal furnaces are allowed to be constructed on the property.

EXCEPTING AND RESERVING therefrom and subject to:

12. All easements, rights-of-way, reservations, and limitations shown or contained in prior instruments of record and as recorded.
13. All coal, mining, mineral, oil and gas rights of every kind and nature.

BEING the same premises which became vested in D&R Land Development Company by deed of Frank S. Schall, single, and Raymond E. Schall and Margaret S. Schall, husband and wife, individually and doing business as the Schall Land Company dated March 15, 2004 and recorded in the office of the Recorder of Deeds of Clearfield County as Instrument #200404716.