

06-1289-CD

Thomas Johnson al vs T. McCloskey

2006-1289-CD

Thomas McCloskey vs Thomas Johnson et

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Thomas H. Johnson & Rebecca
(Plaintiff) E. Johnson

CIVIL ACTION

(Street Address)

No. 06-1289-C

(City, State ZIP)

Type of Case: WML

vs.

Thomas M. McCloskey
(Defendant)

Type of Pleading: Waiver

(Street Address)

Filed on Behalf of:

Thomas H. Johnson and Rebecca E. Johnson
(Plaintiff/Defendant)

(City, State ZIP)

Christopher E. Molinay, Esq.
(Filed by)

25 E Park Ave Ste 6 Dubois PA 15801
(Address)

814-375-1044
(Phone)

(Signature)

FILED No. cc
of 5:10/6/06
AUG 11 2006 Atty pd. 20.00

William A. Shaw
Prothonotary/Clerk of Courts

WAIVER OF RIGHT TO FILE MECHANIC'S LIEN CLAIM

WAIVER OF LIENS

This instrument is executed this 4th day of August, 2006, by
Thomas M. McCloskey ("Contractor") (or "Subcontractor") in

favor of Thomas H. Johnson & ("Owner")
Rebecca E. Johnson

WITNESSETH:

A. Contractor is a contractor within the meaning of the Mechanics Lien Law of 1963.

B. Owner and Contractor intend to enter or have entered into a certain contract ("Contract") in connection with construction of residential dwelling on a parcel of ground known as Lot 71 Sylvan Heights, DuBois, Pennsylvania ("Property"), described as follows:

SEE Exhibit "A".

C. Contractor has, by this instrument and the promises contained herein, covenanted, promised and agreed that no mechanic's or materialmen's liens shall be filed or maintained against the estate or title of Owner in the Property or any part thereof, or the appurtenances thereto, either by itself or anyone else acting or claiming through or under it for or on account of any work, labor or materials supplied in the performance of the work under the Contract or under any supplemental contract or for extra work.

NOW THEREFORE, in consideration of the contract and the covenants of Owner therein contained, and the sum of one dollar (\$1.00) paid in hand to contractor, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby:

1. Contractor, for itself and anyone else acting or claiming through or under it, does hereby waive and relinquish all right to file a mechanic's or materialmen's lien, or notice of intention to file any lien, and does hereby covenant, promise and agree that no mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the estate or title of Owner in the Property or the appurtenances thereto, by or in the name of Contractor, or any subcontractor, materialman or laborer acting or claiming through or under the Contractor for work done or materials furnished in connection with the Contract or by any other party acting

through or under them or any of them for and about the Property or any part of it.

2. No part of any construction loan or loan proceeds shall be, at any time, subject or liable to attachment or levy at the suit of Borrower, general contractor, subcontractor or materialman, or any creditor thereof.

3. This agreement waiving the right of lien shall be an independent covenant by Contractor and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in connection with the above described Contract on the Property to the same extent as any work and labor done and materials furnished under the Contract.

4. In order to give Owner full power and authority to protect itself, the Property, the estate or title of Owner therein, and the appurtenances thereto, against any and all liens filed by Contractor or anyone acting under or through it in violation of the foregoing covenant, contractor hereby irrevocably authorizes and empower any attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania to (i) appear as attorney for it, them or any of them, in any such Court, and in its or their name or names, to the extent permitted by law, mark satisfied of record at the cost and expense of Contractor or of any subcontractor or materialmen, any and all lien or liens, filed in violation of the foregoing covenant, or (ii) cause to be filed and served in connection with such a lien or liens any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, and 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. A reference to the court, term and number in which and where this agreement shall have been filed shall be conclusive evidence of the authority herein to warrant such action, and Contractor, for itself and for them, hereby remises, releases and quit-claims 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. In the event anyone acting through or under Contractor shall so file a lien in violation of the foregoing covenant, Owner may not exercise its rights under this Paragraph 3 unless such lien has not been stricken or discharged (by payment, posting of a bond or other means) for a period of ten days after notice of such lien shall have been received by Contractor.

5. It is the intention of the parties that this waiver shall be recorded in the Office of the Prothonotary of CLEARFIELD County to provide constructive notice of this waiver to any and all subcontractors, materialmen and other persons furnishing labor or materials under this Contract.

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

Thomas M. McCloskey
Thomas M. McCloskey, Contractor

Thomas H. Johnson
, Owner Thomas H. Johnson

Rebecca E. Johnson
, Owner Rebecca E. Johnson

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF CLEARFIELD :
:

On this 4th day of August, 2006, before me, the undersigned officer, personally appeared Thomas H. Johnson and Rebecca E. Johnson, 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 therein contained.

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

Laura L. Emerick (SEAL)
Notary Public
My commission expires:

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

PROPERTY DESCRIPTION
THOMAS H. JOHNSON & REBECCA E. JOHNSON

ALL that certain lot or parcel of ground situate, lying and being in Sandy Township, Clearfield County, Pennsylvania. Said property being also known as Lot No. 43, as shown on the Schall Land Company subdivision plan dated July 12, 1994, surveyed by Lee-Simpson Associates, Inc. and which is more particularly bounded and described as follows, to wit:

BEGINNING at a point in the right of way of Fallen Timber Drive, said point being the southern corner of Lot No. 71 and the western corner of Lot No. 72;

Thence North 48 degrees 59 minutes 23 seconds West along right of way of Fallen Timber Drive, a distance of 100.00 feet to a point;

Thence North 21 degrees 0 minutes 45 seconds East along Lot No. 70, a distance of 304.38 feet to a point;

Thence South 22 degrees 51 minutes 49 seconds East along Lot No. 29, a distance of 157.64 feet to a point;

Thence South 40 degrees 38 minutes 42 seconds East along Lot No. 30, a distance of 57.64 feet to a point;

Thence South 39 degrees 29 minutes 23 seconds West along Lot No. 72, a distance of 208.32 feet to the point and place of beginning.

Being known as Lot No. 71 and containing 33,374 square feet, 0.76 acre.

EXCEPTING AND RESERVING therefrom and subject to:

1. All building and subdivision regulations of Sylvan Heights, as amended, recorded in Volume 1635, page 27, in Clearfield County Recorder's Office; all of said restrictions being covenants which run with the land.
2. All easements, rights of way, reservations, and limitations shown or contained in prior instruments of record and as recorded.
3. All coal mining, mineral, oil and gas rights of every kind and nature.
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:

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.

SUBJECT to all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

BEING the same premises which became vested in Thomas H. Johnson and Rebecca E. Johnson, husband and wife, by deed of D&R Land Development Company, LP dated November 21, 2005, and recorded in the office of the Recorder of Deeds of Clearfield County as Instrument No. 200522272.