

06-1772-CD
R. Gabrielson vs Jonathan Zendek al

**Robert Gabrielson vs Jonathan Zendek et
2006-1772-CD**

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROBERT C. GABRIELSON,

Plaintiff,

vs

JONATHAN Q. ZENDEK, single,
and CHRISTEN L. CARNS, single,

Defendants.

NO. 2006-1772-CJ

Mechanic's Lien Waiver

For Filing

Raymond J. Wendekier
Raymond J. Wendekier, Esquire
Attorney for Plaintiff & Defendants

306 Magee Avenue
Patton, PA 16668
Attorney ID #15131
Telephone # (814) 674-5991

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01230 cm ICC A/A, Wendekier
OCT 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

MECHANIC'S LIEN WAIVER

Made this 21st day of October, 2006.

FROM ROBERT C. GABRIELSON, with an office at 915 Maple Road, Coalport, Pennsylvania 16627, hereinafter referred to as a "CONTRACTOR",

TO

JONATHAN Q. ZENDEK, single, and CHRISTEN L. CARNS, single, of 2440 Ball Hollow Road, Coalport, Pennsylvania 16627, "OWNERS".

RECITALS:

1. CONTRACTOR has contracted with OWNER by contracts dated June 20, 2006, referred to as ("CONTRACT") to provide all materials and perform all labor necessary for construction of a 30 feet long by 26 feet 8 inches wide garage and for excavation of a foundation and a house and back filling at 2440 Ball Hollow Road, Beccaria Township, Coalport, Clearfield County, Pennsylvania, the PROPERTY, which is described on the attached Schedule "A".
2. AMERISERV FINANCIAL BANK (hereinafter referred to as the "BANK"), has agreed and committed to provide a mortgage loan in the sum of ONE HUNDRED TWENTY EIGHT THOUSAND NINE HUNDRED NINETY FIVE AND 00/100 DOLLARS (\$128,995.00) to OWNER. This sum is to be advanced by BANK as required by OWNER and/or as the construction 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 CONTRACTS or by any other party acting through or under them or any of them for or about the garage, excavation and back filling and improvements on 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 construction of the garage, excavation for house and backfilling and other improvements or 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 to the construction of the garage and other improvements 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 garage, excavation for the house and back filling and other improvements 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.

ALL that certain piece or parcel of land situate in Beccaria Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin set on the Northeast side of Township Road No. 536, a/k/a Ball Hollow Road; then along the line of land now or formerly of Janet D. Carns, North $69^{\circ} 38'$ East for a distance of 501.57 feet to an iron pin set on line of land now or formerly of Jack Carns; then along the line of land now or formerly of Jack Carns the following courses and distances:

- 1) South $19^{\circ} 26' 35''$ East for a distance of 241.84 feet to a set iron pin, and
- 2) South $69^{\circ} 37' 57''$ West for a distance of 470.71 feet to an iron pin set

on the Northeast side of Township Road No. 536; then along the Northeast side of Township Road No. 536 North $26^{\circ} 43' 47''$ West for a distance of 243.32 feet to an iron pin set on the Northeast side of Township Road No. 536, the place of beginning.

This parcel of land contains 2.70 acres and is known as Lot 1 as shown on the Plat of Survey for Jack Carns Subdivision dated October 7, 2005, prepared by Jeffrey S. Doughty, Registered Professional Surveyor and recorded March 8, 2006 in Clearfield County, PA as Instrument No. 200603552.

Schedule "A"

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

CONTRACTOR:

Thomas E. Morris

Witness

Robert C. Gabrielson (SEAL)

Name: Robert C. Gabrielson

Title: Owner

OWNER:

Raymond J. Winkler

Witness

Jonathan Q. Zendek (SEAL)

JONATHAN Q. ZENDER

Raymond J. Winkler

Witness

Christen L. Carns (SEAL)

CHRISTEN L. CARNS

ACKNOWLEDGMENT

State of Pennsylvania |

|ss

County of Clearfield |

On this the 21st day of October, 2006, before me, a notary public, the undersigned officer, personally appeared ROBERT C. GABRIELSON, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the within instrument for the purposes contained therein.

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

(Seal)

Donna M. Morrison
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Donna M. Morrison, Notary Public
Irvona Boro, Clearfield County
My Commission Expires Sept. 26, 2007

Member, Pennsylvania Association of Notaries

ACKNOWLEDGMENT

State of Pennsylvania |
|ss

County of Cambria |

On this the 27th day of October, 2006, before me, a notary public, the undersigned officer, personally appeared JONATHAN Q. ZENDEK, single, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes contained therein.

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

(Seal)

Mary Ellen Wendekier

Notary Public

ACKNOWLEDGMENT

State of Pennsylvania |
|ss

County of Cambria |

On this the 27th day of October, 2006, before me, a notary public, the undersigned officer, personally appeared CHRISTEN L. CARNES, single, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she 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