

07-460-CD

Ottis Williams vs Ottis Williams et al

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2007-460-CD

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

FILED

MAR 23 2007

Ottis W. Williams, III
(Plaintiff)

813 Mary Street
(Street Address)

Haztdale, PA 16651
(City, State ZIP)

CIVIL ACTION

William A. Shaw
Prothonotary/Clerk of Courts

No. 2007-460-CD

Type of Case: _____

Type of Pleading: Mechanic's Lien
Waiver

Filed on Behalf of:

Ottis
(Plaintiff/Defendant)

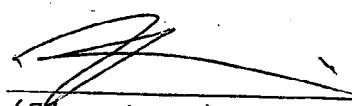
vs.
Ottis W. Williams, III
and Desirae N. Williams
(Defendant)
813 Mary Street
Haztdale, PA 16651
(Street Address)

(City, State ZIP)

Mark R. Wendeler
(Filed by)

306 Magee Avenue
Patton, PA 16668
(Address)

814-674-5941
(Phone)


(Signature)

FILED pd \$20.00
93:35cm Attn: Wendeler
MAR 23 2007
CR

William A. Shaw
Prothonotary/Clerk of Courts

STIPULATION AGAINST MECHANIC'S LIENS AND RELEASE AND WAIVER

THIS STIPULATION AGAINST MECHANIC'S LIENS AND RELEASE AND WAIVER (hereinafter referred to as the "STIPULATION") IS MADE THIS 23rd day of March, 2007.

FROM OTTIS W. WILLIAMS, III, (hereinafter referred to as the "CONTRACTOR").

TO

OTTIS W. WILLIAMS, III, and DESIREE N. WILLIAMS, husband and wife, (hereinafter referred to as the "OWNERS").

A. RECITALS:

1. CONTRACTOR has contracted with OWNERS to provide materials and perform labor necessary for the construction and installation of a single-family residential dwelling (hereinafter referred to as the "CONTRACT") on the real estate which is located Ramey Borough, Clearfield County, Pennsylvania, described on the deed recorded in Clearfield County, Pennsylvania as Instrument Number 200618836 (hereinafter referred to as the "PROPERTY").
2. JUNIATA VALLEY BANK (hereinafter referred to as the "BANK") has agreed and committed to provide a construction mortgage loan in the amount of TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$225,000.00) (hereinafter referred to as the "LOAN"). As construction progresses portions of such LOAN will be disbursed by the BANK, pursuant to the BANK's draw schedule and rules, to OWNERS and CONTRACTOR for the purpose of having CONTRACTOR provide materials and perform labor necessary to build and complete construction of a single-family residential dwelling on the PROPERTY by using the materials and specifications and according to the plans set forth in the CONTRACT.
3. CONTRACTOR, OWNERS and BANK have entered, or will enter into various agreements, which set forth the terms of disbursement of the LOAN in incremental draws upon completion of various portions of construction of the single-family dwelling which is to be built by CONTRACTOR for OWNERS upon the PROPERTY (these agreements shall be collectively be referred to hereinafter as the "CONSTRUCTION AGREEMENT").

B. MECHANIC'S LIEN RELEASE AND WAIVER:

1. CONTRACTOR, for itself and anyone else acting or claiming through or under it, for and in consideration of payment under the CONTRACT and the CONSTRUCTION AGREEMENT and the considerations stated within the CONTRACT and the CONSTRUCTION AGREEMENT, and intending to be legally bound by this STIPULATION, and does release and discharge the OWNERS from any and every liability arising out of the labor performed or materials supplied by the undersigned under the terms of the CONTRACT AND CONSTRUCTION AGREEMENT to the extent of its right to file and proceed regarding mechanic's and materialmen's liens. To that end, CONTRACTOR, for itself and anyone else acting or claiming through or under it, for and in consideration of payment under the CONTRACT and the CONSTRUCTION AGREEMENT and the considerations stated within the CONTRACT and the CONSTRUCTION AGREEMENT, and intending to be legally bound by this STIPULATION, waives, releases and relinquishes all right to file mechanic's and materialmen's liens, claims and notices of intention to file any such liens or claims, and covenants, promises and agrees that no mechanic's or materialmen'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 names of the CONTRACTORS 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. Further, that all subcontractors, materialmen, and laborers who perform work under the CONTRACT or CONSTRUCTION AGREEMENT shall look to and hold CONTRACTOR 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, or the PROPERTY for any subcontracts, and materials and work done and labor furnished under the CONTRACT or under any contract for extra work between CONTRACTOR and OWNERS.
2. This agreement waiving the right of mechanic's and materialmen's liens shall be an independent covenant and shall operate and be effective with respect to work done and materials furnished under any supplemental contracts for extra work in the construction, installation, excavation and delivery work as well as to any work and labor done and materials furnished under the CONTRACT and CONSTRUCTION AGREEMENT.

3. In the event that the respective CONTRACTORS consist of more than one person, firm or corporation, the undertakings hereunder of such persons, firms or corporations shall be joint and several with respect to such CONTRACTOR. For purposes of this STIPULATION, 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. Further, if the CONTRACTOR is a partnership, then this STIPULATION shall be binding upon the partnership, as well as the partners individually.
4. In the event that any mechanic's lien filed by the CONTRACTOR or any person, firm or corporation claiming under, through or against a CONTRACTOR, such CONTRACTOR, for itself and all such persons, firms and corporations claiming under such CONTRACTOR, irrevocably waives any right to a jury trial in any action to strike or discharge the lien.
5. If any respective CONTRACTOR hereunder or any person, firm or corporation claiming under, through or against such respective CONTRACTOR files a mechanic's lien, notwithstanding this STIPULATION, OWNERS, their heirs, successors or assigns, and BANK 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, and BANK 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 by way of off-set, such CONTRACTOR agrees to pay the amount of the difference to OWNERS, their heirs, successors or assigns, or BANK, as the case may be, upon demand.
6. The 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 excavation, construction, other work or installation with regard to the construction and completion of the single-family dwelling and any right to file for such liens, which have or may have attached prior to the execution of this STIPULATION.

7. In addition, the CONTRACTOR further agrees that all provisions of this STIPULATION 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 STIPULATION, as those provisions apply to the waiver of any and all mechanic's liens and materialmen's liens.

IN WITNESS WHEREOF, the undersigned have signed, sealed and delivered this STIPULATION as of the date first written above.

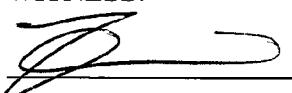
CONTRACTOR:

WITNESS:



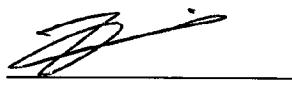
BY: Ottis W. Williams III (SEAL)
OTTIS W. WILLIAMS, III

WITNESS:



OWNERS:

Ottis W. Williams III (SEAL)
OTTIS W. WILLIAMS, III



Desiree N. Williams (SEAL)
DESIREE N. WILLIAMS

ACKNOWLEDGMENT

State of Pennsylvania)

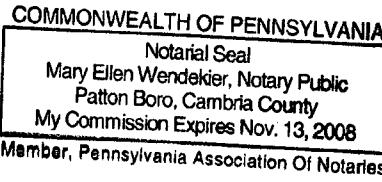
) ss

County of Cambria)

On this the 23rd day of March, 2007, before me, a notary public, the undersigned officer, personally appeared MARK R. WENDEKIER, known to me (or satisfactorily proven) to be a member of the bar of the highest court of said state and a subscribing witness to the within instrument and certified that he was personally present when OTTIS W. WILLIAMS, III, CONTRACTOR, whose name is subscribed to the within instrument, executed the same and that said person acknowledged that he executed the same for the purposes contained herein.

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

(NOTARY SEAL)


NOTARY PUBLIC

ACKNOWLEDGMENT

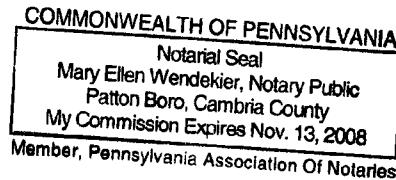
State of Pennsylvania)
) ss
County of Cambria)

On this the 23rd day of March, 2007, before me, a notary public, the undersigned officer, personally appeared MARK R. WENDEKIER, known to me (or satisfactorily proven) to be a member of the bar of the highest court of said state and a subscribing witness to the within instrument and certified that he was personally present when OTTIS W. WILLIAMS, III, and DESIREE N. WILLIAMS, husband and wife, whose names are subscribed to the within instrument, executed the same and that said persons acknowledged that they executed the same for the purposes contained herein.

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

(NOTARY SEAL)

Mary Ellen Wendekier
NOTARY PUBLIC



William A. Shaw
Prothonotary/Clerk of Courts

MAR 23 2007

FILED

FILED

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William A. Shaw
Prothonotary/Clerk of Courts