

07-1321-CD
M Brubaker vs McCloskey Homes

MARNIE L. BRUBAKER
Owner/Plaintiff/Defendant

vs.

MCCLOSKEY HOMES, INC.
Contractor/Defendant/Plaintiff

FILED
01/05/08 Ferraro, KruK
AUG 16 2007 Ferraro

William A. Shaw Atlys pd
Prothonotary/Clerk of Courts 20.00

07-1321-CD

WAIVER OF RIGHT TO FILE MECHANIC'S LIEN CLAIM

WAIVER OF LIENS

THIS AGREEMENT made this 1st day of August, 2007, by and between McCLOSKEY HOMES, INC. of 241 Treasure Lake, DuBois, PA, 15801, hereinafter referred to as Contractor/Defendant/Plaintiff,

and

MARNIE L. BRUBAKER, of 1392 Treasure Lake, DuBois, PA, 15801 hereinafter referred to as Owner/Plaintiff/Defendant.

WITNESSETH:

1. Contractor/Defendant/Plaintiff is a contractor within the meaning of the Mechanics Lien Law of 1963 and its Amendments under Act 52.
2. Owner/Plaintiff/Defendant and Contractor/Defendant/Plaintiff intend to enter or have entered into a certain contract ("Contract") for the Contractor/Defendant/Plaintiff to erect and construct a beauty salon on land situate in SANDY TOWNSHIP, Clearfield County, PA, more particularly described on Exhibit "A" attached hereto and made a part hereof.
3. Contractor/Defendant/Plaintiff has, by this instrument and the promises contained herein, covenanted, promised and agreed that no mechanics' or materialmen's liens shall be filed or maintained against the estate or title of Owner/Plaintiff/Defendant 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 for extra work.

NOW, THEREFORE, in consideration of the contract and the covenants of Owner/Plaintiff/Defendant therein contained, and the sum of ONE and no/100ths (\$1.00) DOLLAR in hand paid to the Contractor/Defendant/Plaintiff the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby:

1. Contractor/Defendant/Plaintiff for himself and any one else acting or claiming through or under him, 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 mechanics' lien or other lien of any kind whatsoever shall be filed or maintained against the estate or title of Owner/Plaintiff/Defendant in the property or appurtenances thereto, by or in the name of Contractor or any subcontractor, materialman or laborer acting or claiming through or under 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. 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 project on the property to the same extent as any work and labor done and materials furnished under the Contract.
3. In order to give Owner/Plaintiff/Defendant full power and authority to protect herself, the property, the estate or title of Owner/Plaintiff/Defendant therein, and the appurtenances thereto, against any and all liens filed by Contractor/Defendant/Plaintiff or anyone acting under or through him in violation of the foregoing covenant, Contractor/Defendant/Plaintiff hereby irrevocably authorizes and empowers any attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania to (i) appear as attorney for him, them or any of them, in any such Court, and in his or their name or names, to the extent permitted by law, mark satisfied of record at the cost and expense of Contractor/Defendant/Plaintiff 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 him 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/Defendant/Plaintiff for himself and for them, hereby remises, releases and quit-claims all rights and 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/Defendant/Plaintiff shall so file a lien in violation of the foregoing covenant, Owner/Plaintiff/Defendant may not exercise their rights under 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/Defendant/Plaintiff.

4. It is the intention of the parties that this Waiver shall be filed 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, Contractor/Defendant/Plaintiff has executed this instrument this 2nd day of August, 2007.

ATTEST:



CONTRACTOR –
McCLOSKEY HOMES, INC.

By: 
Thomas M. McCloskey
President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

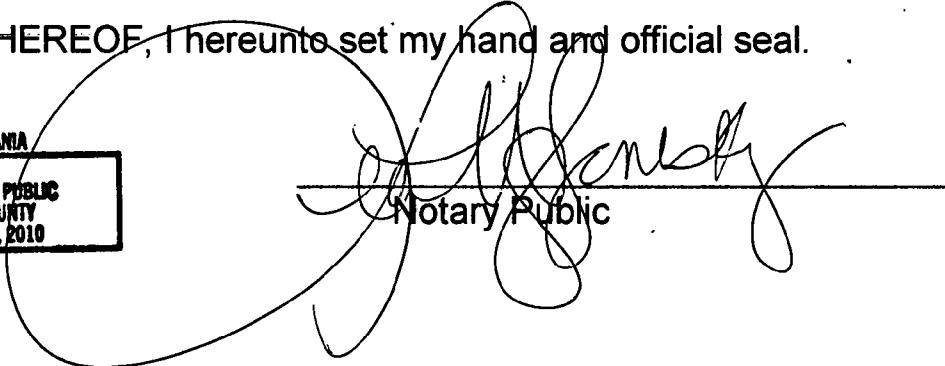
ss:

On this, the 2nd day of August, 2007, before me, the undersigned officer, personally appeared THOMAS M. McCLOSKEY 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 therein contained, being authorized to do so.

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

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
LEA ANN HELTZEL LONESKY, NOTARY PUBLIC
CITY OF DUBOIS, CLEARFIELD COUNTY
MY COMMISSION EXPIRES JULY 11, 2010


Notary Public

THE FOLLOWING SUBCONTRACTORS JOIN IN THE WITHIN WAIVER:

Fred Whelpley
Fred Whelpley

W. W. Gildersleeve
W. W. Gildersleeve

David Courson
David Courson

Randy Sloppy
Randy Sloppy

Charles Ellis
Charles Ellis

Bruce Berkey
Bruce Berkey

Randy Watson
Randy Watson

James Riggie
James Riggie

Todd Thompson
Todd Thompson

Lonnie Lockwood
Lonnie Lockwood

EXHIBIT "A"

ALL that certain parcel of land located within the Treasure Lake Subdivision of **SANDY TOWNSHIP**, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a set iron pin in the right of way of a 15 foot wide macadam surface and being the Western most point of the property herein described; thence North 79° 00' 04" East, 15.11 feet to a one inch iron pipe; thence North 75° 54' 47" East, 121.90 feet to a one inch iron pipe; thence North 26° 10' 08" east, 58.36 feet to a one inch iron pipe; thence North 9° 39' 31" East, 66.71 feet to a one inch iron pipe; thence North 62° 05' 19" West, 18.05 feet to a railroad spike; thence South 70° 26' 18" West, a distance of 64.88 feet to a railroad spike; thence South 34° 03' 45" West, 165.88 feet to the point in place of beginning.

BEING the same premises conveyed to Marnie L. Brubaker, married, by Deed from Bly Development Group, Inc., a Pennsylvania corporation, dated August 5, 2005 and recorded in the Office of the Recorder of Deeds in and for Clearfield County, PA, as Instrument No. 200603216.

ALSO GRANTING AND CONVEYING an easement for ingress, egress and regress across the existing roadways and travelways on the remaining lands of Bly Development Group, Inc., former Grantor, from which the herein described parcel was conveyed, for the purpose of access to and from the property herein conveyed, so as to provide a means of access to and from Coral Reef Road.

The former Grantor also **COVENANTS** and **AGREES** on behalf of itself, its successors and assigns, that so long as Marnie L. Brubaker owns the property conveyed herein, neither Grantor, nor its successors and assigns, shall own or operate a hair salon, or lease rental space to another hair salon, within the Treasure Lake Mini-Mall or on the remaining portion of the parcel from which the former Grantor conveyed the herein described parcel to Marnie L. Brubaker. Notwithstanding the aforesaid covenant, the former Grantor, its successors and assigns, retain the right to lease space for tanning beds and to fingernail salons or to enlarge the currently existing tanning beds and nail salons within the Treasure Lake Mini-Mall. In the event Marnie L. Brubaker sells or conveys her business or the property conveyed herein, or leases her business, or her property, in whole or in part, then this covenant, on the part of the former Grantor not to complete, shall terminate for all time.