

08-1616-CD

R. Jordan Contracting vs R. Hawkins

FILED

AUG 28 2008

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William A. Shaw
Prothonotary/Clerk of Courts

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ATTY

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROBERT JORDAN CONTRACTING
Plaintiff,

vs

ROBERT L. HAWKINS,
JACK L. CARNES,
PATRICK D. HORNE and
ANDREW M. POPYACK,
Defendants.

| NO. 2008-1616-CO

| Mechanic's Lien Waiver

| For Filing

| Raymond J. Wendekier, Esquire
| Attorney for Plaintiff & Defendants
| 306 Magee Avenue
| Patton, PA 16668
| Attorney ID #15131
| Telephone # (814) 674-5991

MECHANIC'S LIEN WAIVER

Made this 27th day of August, 2008.

FROM ROBERT JORDAN CONTRACTING, having an address of 74 Jimmie's Hill,
P.O. Box 108, Ramey, Pennsylvania 16671, hereinafter referred to as a
"CONTRACTOR",

TO

ROBERT L. HAWKINS, JACK L. CARNS, PATRICK D. HORNE and
ANDREW M. POPYACK, c/o 1469 Viola Pike, P.O. Box 188, Smithmill,
Pennsylvania 16680, "OWNERS".

RECITALS:

1. CONTRACTOR has contracted with OWNER by contract dated _____, 2008, referred to as ("CONTRACT") to provide all materials and perform all labor necessary for construction of a completed one and one half (1 ½) story building, including site excavation and concrete foundation on 134 acres off Ball Hollow Road, Beccaria Township, Coalport, Clearfield County, Pennsylvania, the PROPERTY, which is described on the attached Schedule "A".
2. JUNIATA VALLEY BANK (hereinafter referred to as the "BANK"), has agreed and committed to provide a mortgage loan in the sum of ONE HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$110,000.00) 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 construction of the building 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 building 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 building 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 building 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 those certain pieces or parcels of land situate in Beccaria Township, Clearfield County, Pennsylvania, bounded and described as follows:

PARCEL NO. 1: BEGINNING at a fallen Red Oak in the Northeast corner of tract of land warranted in the name of John Funk; then East 115 $\frac{1}{2}$ perches to a post; then by residue of said tract South 160 perches to a post in about the middle of said tract; then West by residue of said Tract 115 $\frac{1}{2}$ perches to a post on the North side of said tract; then by lands said to have belonged to General Broadhead North 160 perches to the place of beginning.

Said tract being now or formerly bounded on the North and West by Buterbaugh Brothers Land & Timber Corporation, on the East by lands now or formerly of Russell Cavaner and on the South by lands now or formerly of Edgar Nevling.

Said tract containing 100 acres more or less.

This parcel of land is further identified on the Clearfield County Assessment Records as Tax Control No. 101.0-12382 and Tax Map No. 101.0-I16-000-00005.

THIS PARCEL OF LAND HAS BEEN MORE RECENTLY DESCRIBED AS FOLLOWS:

Beginning at a set $\frac{3}{4}$ inch iron rebar corner, said corner being the Southeastern corner of the property herein described at a corner of land now or formerly of Janet D. Carns; then along the line of land now or formerly of Janet D. Carns North $77^0 37' 27''$ West for a distance of 1,927.05 feet to a set $\frac{3}{4}$ inch rebar corner on line of land now or formerly of Sherry Lynn Gabrielson; then along land now or formerly of Sherry Lynn Gabrielson and Buterbaugh Brothers Land & Timber Corporation North $12^0 22' 33''$ East for a distance of 2,268.94 feet to a set $\frac{3}{4}$ inch iron rebar corner at a corner of land now or formerly of Buterbaugh Brothers Land & Timber Corporation; then along land now or formerly of Buterbaugh Brothers Land & Timber Corporation South $86^0 02' 24''$ East for a distance of 1,848.81 feet to a set $\frac{3}{4}$ inch iron rebar corner at a corner of land now or formerly of E. P. Bender Coal Company; then along the line of land of E. P. Bender Coal Company South $10^0 09' 45''$ West for a distance of 2,541.43 feet to a set $\frac{3}{4}$ inch iron rebar corner, the place of beginning.

This parcel of land contains 103.81 acres and is shown on the attached plat prepared by Hess & Fisher Engineers, Inc., dated July 1, 2008, made a part hereof and incorporated herein by reference.

PARCEL NO. 2: Beginning at a pine stump corner; then South 72 perches to a post; then East along land of Pearce 56 perches; then North 98 perches to a stone heap; then South 69^0 West 62 perches along land of Al Smith to place of beginning.

THIS PARCEL OF LAND HAS BEEN MORE RECENTLY DESCRIBED AS FOLLOWS:

Beginning at a set $\frac{3}{4}$ inch iron rebar corner, being the Southeastern corner of the herein described property; then along the land now or formerly of E. P. Bender Coal Co. North $80^0 07' 14''$ West for a distance of 924 feet to a set $\frac{3}{4}$ inch iron rebar corner a corner of land now or formerly of Buterbaugh Brothers Land & Timber Corporation; then along the line of land now or formerly of Buterbaugh Brothers Land & Timber Corporation the following courses and distances:

- 1) North $10^0 18' 51''$ East for a distance of 1,261.75 feet to a set $\frac{3}{4}$ inch iron rebar corner, and
- 2) North $76^0 59' 22''$ East for a distance of 1,023.00 feet to a set $\frac{3}{4}$ inch iron rebar corner at a corner of land now or formerly of Jeannie Eyer; then along land now or formerly of Jeannie Eyer South $10^0 50' 48''$ West for a distance of 1,659.85 feet to a set $\frac{3}{4}$ inch iron rebar corner, the place of beginning.

This parcel of land contains 31.21 acres and is shown on the attached plat prepared by Hess & Fisher Engineers, Inc., dated July 1, 2008 made a part hereof and incorporated herein by reference.

This parcel of land is further identified on the Clearfield County Assessment Records as Tax Control No. 101.0-12727 and Tax Map No. 101.0-I16-000-00004.

TOGETHER WITH AN Easement 33 feet in width extending from Ball Hollow Road, Township Route T-536 for ingress, egress and regress and all legal and necessary reasons into above described properties. This easement shall be used by Grantees, their heirs, successors and assigns in common with other authorized users and under the terms and conditions which are more fully set forth in the Easement Agreement dated April 26, 2007 and recorded in Clearfield County as Instrument No. 200709709.

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

CONTRACTOR:
ROBERT JORDAN CONTRACTING

Raymond J. Wendekier Witness By: Robert Jordan (SEAL)
Name: Robert Jordan
Title: Owner

OWNERS:

Raymond J. Wendekier Witness R. L. H. (SEAL)
Name: Robert L. Hawkins

Raymond J. Wendekier Witness Jack L. Carns (SEAL)
Name: Jack L. Carns

Raymond J. Wendekier Witness Pat Horne (SEAL)
Name: Patrick D. Horne

Raymond J. Wendekier Witness Andrew M. Popyack (SEAL)
Name: Andrew M. Popyack

ACKNOWLEDGMENT

State of Pennsylvania |
| ss

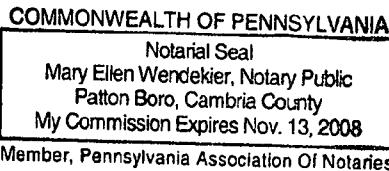
County of Cambria |

On this the 27th day of August, 2008, before me, a notary public, the undersigned officer, personally appeared Robert Jordan, owner of Robert Jordan Contracting, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he is the Owner of Robert Jordan Contracting, and that he is authorized to execute the within instrument for the purposes contained therein by himself as Owner.

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

(Seal)

Mary Ellen Wendekier
Notary Public



N/F
 Buterbaugh Brothers Land
 & Timber Corporation
 Tax Assess. #I16-000-00026
 Deed Book 0539, Page 0089

3/4" REBAR S 86°02'24" E 1848.81'

3/4" REBAR
(set)

N/F
 Buterbaugh Brothers Land & Timber Corporation
 Tax Assess. #I16-000-00026
 Deed Book 0539, Page 0089

Dexter-Carpenter Coal Sales Corp.

Tax Assess. #I16-000-00005
 103.81 acres to be conveyed to

Robert L. Hawkins, Jack L. Carns,
 Patrick D. Horne and Andrew M. Popyack

N/F
 E.P. Bender Coal Co.
 Tax Assess. #I16-000-00006
 Deed Book 1167, Page 0309

N/F
 Sherry Lynn Gabrielson
 Tax Assess. #I16-000-00054
 Instrument #200213142

3/4" REBAR
(set)

1927.05

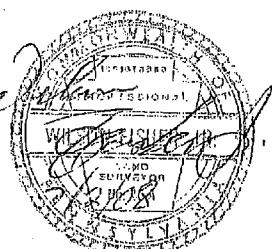
N/F
 Janet D. Carns
 Tax Assess. #I16-000-00014
 Deed Book 1322, Page 0030

P.O.B.
3/4" REBAR
(set)

N 77°37'27" W

BEARING BASE
 MAGNETIC NORTH
 TAKEN: APRIL 25, 2008

N/F
 Keith W. & Tammie J.
 Shoop
 Tax Assess. #I16-000-00013
 Instrument #200506582



LEGEND

- SURVEYED PROPERTY LINES
- ADJOINING PROPERTY LINES
- R-O-W ----- RIGHT-OF-WAY LINES
- ④ 3/4" REBAR (SET)
- N/F NOW OR FORMERLY
- P.O.B. POINT OF BEGINNING

DRAWN BY:	RL	FILE NO.:
CHECKED BY:	WF	JOB NO.:
DATE:	7/1/08	FB NO.:
SCALE: 1" = 400'	REVISION	BY

popyack\popyack.dwg

PLAT ILLUSTRATING LAND TO BE CONVEYED
 FROM DEXTER-CARPENTER COAL SALES CORP.
 TO (103.81 acres)
 BECCERIA TOWNSHIP, CLEARFIELD COUNTY

HESS & FISHER ENGINEERS, INC.
 CONSULTING ENGINEERS, GEOLOGISTS & SURVEYORS
 36 NORTH SECOND STREET
 CLEARFIELD, PENNSYLVANIA 16830 814-765-7541

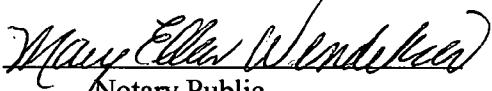
ACKNOWLEDGMENT

State of Pennsylvania |
|ss
County of Cambria |

On this the 27th day of August, 2008, before me, a notary public, the undersigned officer, personally appeared Robert L. Hawkins, Jack L. Carns, Patrick D. Horne and Andrew M. Popyack, 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 contained therein.

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

(Seal)


Notary Public

