

08-2244-CD
John Kennedy vs Jeffrey s. Weyer

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

John F. & Tammy L. Kennedy
(Plaintiff)

CIVIL ACTION

1567 Union St.
(Street Address)

No. 08-2244-CD

Coalport, PA 16627
(City, State, ZIP)

Type of Case: Civil

Type of Pleading: WML

Filed on Behalf of:

John F. & Tammy L. Kennedy
(Plaintiff/Defendant)

VS.

Jeffrey S. Weyer
(Defendant)

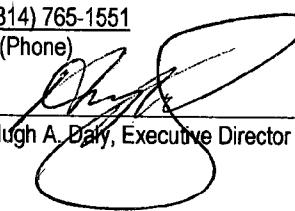
2401 16th St.
(Street Address)

Altoona, PA 16601
(City, State, ZIP)

Central PA Community Action, Inc.
(Filed by)

207 E Cherry Street, Clearfield PA 16830
(Address)

(814) 765-1551
(Phone)


Hugh A. Daly, Executive Director

S
FILED NOCC
01/22/2009
NOV 21 2008 Community Action
William A. Shaw
Prothonotary/Clerk of Courts

Exhibit "C"
STIPULATION, WAIVER AND RELEASE OF LIENS
(See Section 5.2)

CONTRACTOR'S WAIVER OF LIENS

STIPULATION AND FINAL WAIVER AND RELEASE OF LIENS

12th This WAIVER, RELEASE, STIPULATION and AGREEMENT (collectively the "Agreement") is made effective as of the day of November, 2008, by On The Level Remodeling, with an office located at 2401 16th St., Altoona, PA (the "Contractor") in favor and for the benefit of John F. & Tammy L. Kennedy (the "Owner") residing at 1567 Union St., Coalport, Clearfield County, Pennsylvania.

WHEREAS, Owner and Contractor effective as of the above date entered into a certain construction contract ("Contract") relating to the repair, installation, erection and/or construction and completion of certain improvements described in the Contract and generally described as work relating to reduction, control and/or the elimination of identified lead hazards in housing and/or other improvements and alterations ("Project") upon a parcel(s) of land owned by Owner and known as 1567 Union St., Coalport, Clearfield County, Pennsylvania, ("Property") and which Property is more fully described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Contractor is a contractor within the meaning of the Mechanics Lien Law of 1963, 49 P.S. Section 1101, et seq. as exists now or in the future ("Law"). Whenever used in this Agreement, the terms "improvement", "labor", "materials" and "subcontractor" shall include and have the same meaning as set forth in the Law; and

WHEREAS, Contractor, in accordance with the Law and by this Agreement and the promises contained herein and in the Contract, warrants, covenants, promises and agrees that no mechanics' or materialmen's liens or any similar or other types or kinds of liens, claims, encumbrances, charges, security interests upon real or personal property or claims or demands of any kind whatsoever (individually and collectively "Liens") shall be filed, asserted, claimed or maintained against the improvements, Project, Property, estate, rights or title of Owner in the Property or any interest therein or any part thereof, or the appurtenances thereto, by or on behalf of Contractor, any subcontractor, materialman or any person or entity claiming or acting for, through or under Contractor or any of them for or on account of any work, labor, equipment, supplies or materials performed or supplied in the performance of any of the work (as defined or indicated in the Contract) or relating to the Project or under any supplemental contract or contract for additional or extra work in the construction, erection, repair, installation or completion of the improvements and/or alterations, Project or Work or on the Property or any part thereof or appurtenance thereto.

NOW, THEREFORE, to induce Owner to enter into the Contract and in consideration of the agreements of Owner therein contained, other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Contractor stipulates, covenants, warrants and agrees as follows:

1. Incorporation. All of the foregoing is incorporated herein by reference the same as though herein fully set forth.
2. Waiver and Release of Liens. Contractor, for himself/itself any and all subcontractors, laborers, materialmen and any person or entity (individually and collectively the "Subcontractors") claiming or acting for, through or under Contractor, does hereby fully and forever waive, release and relinquish all rights to have, file, maintain, claim or assert any Liens whatsoever or notice of intention to file any Liens and does hereby warrant, covenant and agree that no Liens shall be filed, maintained, asserted or claimed against the building, improvements, work, Project, Property, estate, rights or title of Owner in the Property or any part thereof or interest therein or the appurtenances thereto, by or in the name of Contractor, or by any Subcontractor or any person claiming or acting for, through or under any of them for any labor, work or services performed or supplies or materials furnished in connection with or relating to the work, Project, Contract, or Property or by any other person. Further, the Contractor for itself, any and all Subcontractors and any other person forever quitclaims to Owner all manner of Liens, claims and demands whatsoever which Contractor or any of them may have now or in the future on, in or against the Property, Project, work or improvements or any part thereof or the Owner.
3. Independent Covenant. This Agreement waiving and releasing all rights to have, file, assert, claim or maintain any Liens shall be and is an independent covenant and warranty by Contractor for itself, any Subcontractor and any person



claiming or acting for, through or under Contractor and shall operate and be effective irrespective of Owner's performance and applies to all labor, work and services done, supplies, equipment and materials furnished under any supplemental agreement or or additional or extra work or otherwise in the erection, installation, construction and completion of the work or Project or in connection with or relating to the Contract, Property or above-described Project on or about the Property in the same manner and to the same extent as any work and labor done, supplies, services and materials furnished under or relating to the Contract or in connection with the Project or Property.

4. Power of Attorney to Satisfy Lien. To give Owner full power and authority to protect, himself, all buildings, improvements, the Project, Property, the estate, rights, interests and title of Owner therein, and all appurtenances thereto, against any Liens filed by Contractor or any Subcontractor or person claiming or acting for, through or under Contractor in violation of the foregoing covenant or this Agreement, Contractor hereby irrevocably authorizes and empowers any attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania: (i) to appear as attorney for Contractor, Subcontractor or any of them, in any such court, and in Contractor's, Subcontractor's or their name or names, to the fullest extent permitted by law to strike and/or mark satisfied of record at the sole cost and expense of Contractor or of any Subcontractor or any other person, any Liens, filed or asserted in violation of the foregoing covenant, warranty or this Agreement, or (ii) to cause to be filed and served in connection with such Liens any pleading or instrument, or any amendment to any pleading or instrument previously filed by or on behalf of Contractor, Subcontractor or any of them, and to incorporate therein, as part of the record, the full release and waiver contained in this Agreement; and for such act or acts this Agreement 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 and binding evidence of the full authority herein to warrant and authorize all such action, and Contractor, for himself/itself and for all Subcontractor and any person and their respective heirs, personal representatives, successors and assigns, hereby fully and forever remises, releases, waives, and quitclaims all rights and all manner of errors, defects and imperfections whatsoever in striking any Liens or entering such satisfaction or in filing such pleading, instrument or amendment, or in any way relating to or concerning them or any of them.

5. Hold Harmless. Contractor covenants and agrees that all Subcontractors shall look to and hold only the Contractor personally liable and that there shall not be any Liens, claims or demands whatsoever against the Property or Owner for any work or labor done or supplies or materials furnished under or in connection with the Contract, Project, work or otherwise. Contractor agrees to and shall hold the Owner and his heirs, personal representatives, successors and assigns ("Indemnitees") harmless from and fully indemnify and defend Indemnitees and each of them against any and all Liens, losses, damages, liabilities, suits, judgments, fines, penalties, actions, costs and expenses including, without limitation, attorneys' and experts' fees, incurred by any or all Indemnitees and all demands or claims of any kind whatsoever asserted, made or brought and arising or alleged to arise, directly or indirectly, out of or resulting from, in whole or in part, any violation or breach of the agreements or representations in this Agreement or the Contract or from any Liens asserted, maintained, claimed or filed in violation of this Agreement or the Contract.

6. Binding Effect. It is the express purpose and intent of this Agreement that the Owner and his heirs, personal representatives, successors and assigns shall hold, have, use and enjoy the Project, Property and all materials and improvements free, clear and discharged from any and all Liens and claims whatsoever which Contractor, Subcontractor or anyone claiming or acting for, through or under, Contractor now have, or might or could have against the same if this Agreement had not been made. It is hereby warranted, stipulated and agreed, as part of the Contract and for the consideration therein set forth, that neither the Contractor, any Subcontractor nor any other person furnishing any work, services, labor, supplies, materials or equipment to or for the Contractor, work, Project or Property under or relating to the Contract or in regard to the Property, Project, work or improvements shall have the right to or will assert, claim, maintain or file any Liens for any work, labor or services done or supplies or materials furnished to or for the said improvements, work, Project, Property or any part thereof. Every part of this Agreement shall be fully binding upon Contractor, all Subcontractors and persons claiming or acting for, under or through Contractor or any of them and their respective heirs, personal or legal representatives, successors and assigns and inure to the benefit of Owner and his heirs, personal or legal representatives, successors and assigns.

7. Interpretation. If any one or more of the terms or provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, it is the specific intent of the Contractor and this Agreement that any such offending provision or term shall be deemed to be modified to be within the maximum limits of validity and be enforceable while most nearly preserving its original intent and purpose; however, if the offending provision cannot be so modified, it shall be stricken and all other terms and provisions of this Agreement in all respects shall remain valid and fully enforceable. Each paragraph, provision and part of this Agreement is separable and constitutes a separate and distinct



covenant, warranty, stipulation, condition and agreement. Whenever used in this Agreement, the singular includes the plural, the plural the singular and the use of any gender includes all genders. Contractor covenants and agrees that this Agreement shall be construed in a neutral manner, and in interpreting this Agreement, there shall be no inference or presumption by operation of law or otherwise that any term, part or provision of this Agreement shall be more strictly construed against any person for any reason whatsoever. The term "person" whenever used in this Agreement shall mean and include any natural person, corporation, partnership, association, limited liability company, trust, estate, governmental or any other type of entity. Words or terms used herein and which are defined in the Contract shall have the meaning set forth in the Contract unless otherwise defined herein or the context otherwise requires.

8. Work Not Commenced. Contractor certifies and warrants to Owner and all other persons and entities that as of the date hereof, no labor, work or services of any kind or nature have yet been done nor any materials furnished relating to or for the Contract, work, improvements or on or about the Project or Property by any person. Further, Contractor warrants that the execution and delivery of this Agreement by the undersigned person has been duly authorized and approved by all requisite corporate and other action and constitutes a legal, valid and binding obligation of Contractor.

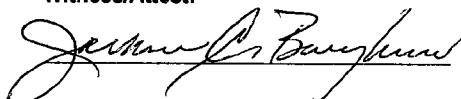
9. Further Actions. The Contractor agrees to and shall sign, acknowledge and deliver promptly to Owner and Lawrence County Social Services, Inc. ("LCSS") all such other documents and writings and promptly take all actions requested by Owner or LCSS to accomplish or more fully put into binding effect any or all of the provisions, purposes or intent as indicated in or contemplated by this Agreement and/or the Contract.

10. Filing With the Prothonotary. This Waiver, Release, Stipulation and Agreement is made and intended to be valid and enforceable to the maximum extent permitted by Law and to be filed with the Prothonotary for the County of Clearfield, Commonwealth of Pennsylvania in accordance with the requirements of all applicable laws including, without limitation, Section 402 of the Pennsylvania Mechanics' Lien Law of 1963, 49 P.S. Section 1402.

IN WITNESS WHEREOF, the Contractor, intending to be legally bound, has set his hand and seal effective the date first above written.

Signed, sealed, and delivered in the presence of:

Witness/Attest:



ACKNOWLEDGMENT FOR INDIVIDUAL

Contractor:


Jeffrey S. Weyer, On The Level Remodeling (Seal)

COMMONWEALTH OF PENNSYLVANIA:

:SS.

COUNTY OF CLEARFIELD:

On this 12th day of November 2008, before me a notary public in and for the Commonwealth of Pennsylvania personally appeared Jeffrey S. Weyer, who first being duly sworn according to law, deposes and says that he/she has read and fully understands the foregoing Stipulation and Final Waiver and Release of Liens and has signed and sealed the foregoing Stipulation and Final Waiver and Release of Liens for the purposes therein contained and desires that the same shall be recorded as such.

Sworn to or affirmed, acknowledged and signed before me this 12th day of November 2008, and in witness whereof, I hereunder set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Jackson C. Baughman, Notary Public
Clearfield Boro, Clearfield County
(Notarial Seal) My Commission Expires Aug. 22, 2010
Member, Pennsylvania Association of Notaries



This Deed,

MADE the 31st day of MAY
in the year two thousand six (2006)
BETWEEN Lala M. Mattei, of 20 E. Orchard Street, Terryville, CT.
06786 hereafter known as the GRANTOR.....

A

N

D

John F. Kennedy and Tammy L. Kennedy, husband and wife, of 449 Fay Avenue, Elizabeth, New Jersey 07202 as Tenants by the Entireties with Rights of Survivorship hereafter known as the GRANTEEES.....

WITNESSETH, That in consideration of \$ 10,000.00
TEN THOUSAND DOLLARS and 00/100----- Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor do es hereby grant
and convey to the said grantee s,

ALL

THOSE TWO (2) CERTAIN lots or parcels of land situate in the Village of Rosebud,
Beccaria Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake at the corner of Union Street and Hazel Alley; thence along Union Street North eighty-four (84) degrees West one hundred (100) feet to the corner of Lot No. 42; thence along said Lot South six (6) degrees West one hundred fifty (150) feet to a stake on Chestnut Alley; thence along said Alley South eighty-four (84) degrees East one hundred (100) feet to a stake on Hazel Alley; thence along Hazel Alley North six (6) degrees East one hundred fifty (150) feet to the stake on Union Street and place of beginning. Being known as Lots numbered 43 and 44 in the Lydia Campbell Addition to the Village of Rosebud.

BEING the same premises to which title became vested in Lala M. Mattei, by deed of Ruth M. Heil, widow, dated March 28, 1990 and recorded in Clearfield County Deed Book Volume 1336 at page 406 on April 19, 1990 at 12:09 pm.