

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

DIXON A.C. & R. CORPORATION,	:	CIVIL ACTION - LAW
Plaintiff	:	
	:	
vs.	:	NO. 07-01461
	:	
	:	
CHOICE FUELCORP, INC.,	:	
Defendant	:	

**OPINION AND ORDER**

This case arises from work performed to a commercial boiler owned by the Defendant. The Plaintiff avers that repairs were made to Defendant’s commercial boiler and that the Defendant failed to pay for work performed. The Plaintiff asserts that it is entitled to \$12,431.82 plus interest.

Although the Defendant does not dispute that work was performed to the boiler system, the Defendant contends that a written estimate was received for work in the amount of \$1,722.78 and that oral assurances were made that the work would not exceed \$3,000.00. The Defendant additionally contends that although additional work was authorized, the oral estimates for additional work amounted to \$1,200.00.

Following a non-jury trial on this matter, the court concludes that the Defendant, as the owner of record of property located at 2344 Sylvan Dell Road, South Williamsport, Pennsylvania hired the Plaintiff to perform repairs to a commercial boiler system. The Defendant was hired to get the boiler system “up and running.” Because the boiler system had not been used for some time, testing was required to the unit. In

order to perform the initial testing, repairs had to be made to the boiler. The costs related to the initial testing amounted to \$1,297.40. This amount was paid for by the Defendant and is not in dispute. Following the initial testing, additional work was performed by the Plaintiff. On this issue the court finds credible the testimony of Plaintiff's employee, Duane Batschelet.

According to Mr. Batschelet, the Plaintiff was hired to get the Defendant's boiler system "up and running." Following the initial testing of the system, it was apparent that additional work was needed. Work performed was discussed with and approved by Jason Weisz, the owner and President of Choice FuelCorp Inc.

Also instructive was the testimony of Helmut Wilhelm, the former Operations Manager for Choice Fuel. According to Mr. Wilhelm, the Defendant enlisted Plaintiff's services to make their commercial boiler "operational." No discrepancies were observed by Mr. Wilhelm with regard to work performed compared to invoices received. Mr. Wilhelm's understanding of additional amounts charged by the Defendant related to additional work performed, namely work for leaking pipes, chimney exhaust repair, valve repair or replacement in one of the bays, and replacement or repair of lines running from the boiler. Mr. Wilhelm additionally testified that work performed was authorized by the Defendant and no problems were observed with the work performed.

Mr. Weisz, the owner and President of Choice FuelCorp, Inc. similarly testified that in his initial discussion with Duane Batschelet regarding the boiler, he expressed his desire for a "functional system."

Under Pennsylvania's Mechanics Lien Law, a contractor is entitled to a lien on a property for nonpayment of a debt owed due to work for the erection, construction, alteration or repair of an improvement on the property. 49 P.S. § 1301. As long as the value of the labor and materials provided exceeds \$500.00, the contractor has a right to seek a mechanics' lien against the property for unpaid debts.

Although the Defendant contends that the Plaintiff was a subcontractor, and that the Plaintiff failed to follow the statutory requirements for a subcontractor to file a mechanics' lien, this Court finds Plaintiff's argument meritless and devoid of any evidentiary basis. According to testimony presented at trial, the Plaintiff was hired directly by the Defendant. The Plaintiff performed the work to the Defendant's boiler system. There was no testimony to indicate that the Plaintiff hired a third party contractor or that any other party was employed as a subcontractor to perform the work.

Although Defendant contends that "there was no notice that Dixon intended to file a mechanic's lien" and that Plaintiff failed to advise as to whether it was a contractor or subcontractor pursuant to 49 Pa.C.S.A. § 1503(1), this Court finds that the Plaintiff has met all statutory requirements for filing a mechanics' lien claim.

Claimants can perfect their mechanics' liens by filing claims for debts owed with the Prothonotary. 49 P.S. § 1502. Claimants are also to file an affidavit of service setting forth the date and manner of service. Id. If these steps are taken, the mechanics' lien is perfected and can be enforced through a civil complaint. 49 P.S. § 1701. In the present action, it is undisputed that the Plaintiff provided labor and materials with a value in excess of \$500.00. Plaintiff filed its claim with the Prothonotary on March 29, 2007. Plaintiff's Mechanics' Lien Claim included the following provision:

DIXON A.C. & R. CORPORATION...files this Mechanics' Lien claim against the improvements and property situate at 2344 Sylvan Dell Road, South Williamsport, Lycoming County, Pennsylvania...for the debt due to Dixon A.C. & R. Corporation **as a contractor** for materials and labor furnished by Dixon A.C. & R. Corporation for the repair and replacement of materials for the commercial boiler situated on the Property... (Emphasis added).

Service has not been contested by the Defendant. Accordingly, the Plaintiff perfected its mechanics' lien and placed the Defendant on notice that as a contractor, it was seeking a mechanics' lien against Defendant's property. Accordingly, this Court finds that all statutory requirements were met by the Plaintiff.

The Defendant additionally contends that the Plaintiff's claims are barred by the Statute of Frauds pursuant to 13 Pa.C.S.A. §2201(a). This Court finds, however, that the Statute of Frauds provision relied upon by the Defendant does not apply in the instant matter, as the agreement between the parties was primarily an agreement for the provision or rendition of services. DeMatteo v. White, 336 A.2d 355 (Pa.Super. 1975)(citing York Heating and Ventilating Company v. Flannery, 87 Pa.Super. 19 (1926)); Electro Chemical Engineering Manufacturing Company v. Kovatch Truck Center, Inc., 9 Pa.D. & C.4<sup>th</sup> 146 (1991). In DeMatteo, *supra*, homeowners brought a breach of contract action against contractors, retailers and wholesalers after the brick of their newly built homes began to break. In analyzing the application of the Uniform Sales Act to the homeowners' claims, the court held:

The contract in suit was in no sense a contract of sale. It was a construction contract. The transfer of property in the fan, motor, pipe coil heater, air washer, reheater coils, condensation system, duct system and steam piping was but incidental to the main purpose which was the furnishing of labor and the assembly of material in the erection and construction of a heating system. Id. at 358.

Moreover, Pennsylvania courts have held that mechanics' lien claims can be based upon oral agreements between the parties. Denlinger, Inc. v. Agresta, 714 A.2d 1048 (Pa.Super. 1998); Howe v. Beloff, 56 A.2d 352 (Pa.Super. 1948).

Pursuant to the testimony of the parties and their witnesses, this Court finds that the Plaintiff provided labor and materials for the improvement of a commercial boiler system located at 2344 Sylan Dell Road, South Williamsport, Pennsylvania. Work was provided at the request of the Defendant. Work performed related to the repair and improvement of a commercial boiler system. The Plaintiff was hired by the Defendant to get the boiler system "up and running." Work performed included a variety of services, including repairs to leaking pipes, valve replacements, and repair and replacement of boiler lines. The main purpose of the agreement was the furnishing of labor and the construction of a functional boiler system. Parts provided in the rendition of services by the Plaintiff were merely incidental to the agreement of the parties - which was to make the boiler system operational for use by the Defendant. The Defendant authorized the work performed, and subsequently failed to pay amounts due and owing, namely \$12,431.82.

### **ORDER**

AND NOW, this 4<sup>th</sup> day of June, 2008, after a non-jury trial in the above-captioned matter, this Court hereby ORDERS and DIRECTS that judgment be entered in favor of the Plaintiff, Dixon A.C. & R. Corporation and against the Defendant, Choice FuelCorp., Inc. and the property located at 2344 Sylan Dell Road, South

Williamsport, Pennsylvania in the amount of \$12,431.82. Further, it is ORDERED and DIRECTED that interest shall accrue on this judgment at the rate of 6% per annum from May 22, 2008 until such time as the judgment is satisfied.

BY THE COURT,

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Richard A. Gray, J.

cc: Ryan M. Tira, Esq.  
Jason F. Poplaski, Esq.