

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CONESTOGA CERAMIC TILE DISTRIBUTORS, INC., : NO. 11 - 01,932
Plaintiff :
vs. : CIVIL ACTION - LAW
PENNSYLVANIA COLLEGE OF TECHNOLOGY, :
Defendant : Preliminary Objections to
: Mechanic's Lien Claim

OPINION AND ORDER

Before the Court are Defendant's preliminary objections to the mechanic's lien claim filed by Plaintiff to No. 11-90,284 on September 1, 2011,¹ and Plaintiff's preliminary objections to Defendant's preliminary objections. Argument was heard December 20, 2011.

In connection with Defendant's (hereinafter "the College") construction of additional facilities through its "Stage X Building Program", Plaintiff, acting as a "lower tier vendor", provided tile and setting materials to ProFast Commercial Floors, a sub-contractor which worked for the general contractor, IMC Construction. Claiming an unpaid balance due of \$51,872.93 plus interest, Plaintiff filed a Mechanic's Lien Claim on September 1, 2011, against 5 parcels of land owned by the College.

In its preliminary objections, the College contends that (1) a "lien waiver" prevents the filing of the instant lien, (2) no lien may be lodged as the materials were furnished for a "purely public purpose", and (3) the claim is defective for failing to aver that the five properties listed are part of a single business or residential plant. In the preliminary objections to those objections, Plaintiff seeks to strike the objections on the following grounds: (1) there is no underlying Mechanic's Lien Claim filed to the instant docket number to which Defendant could file an objection, (2) the preliminary objections are untimely, not having been filed within

¹ Although the Mechanic's Lien Law of 1963 provides that "[a]ny party may preliminarily object to a claim", 49 P.S. Section 1505, the Prothonotary would not allow Defendant to file its preliminary objections to the same docket number as Plaintiff's claim but required the opening of a new docket. Since preliminary objections *may* be filed to a claim, the Court will direct the transfer of the objections, all subsequent filings, and this Opinion and Order to No. 11 - 90,284, and the refund of Defendant's filing fee in the instant matter.

twenty days of the claim,² and (3) a Notice to Plead was required as the objections raise issues of fact.³

None of Plaintiff's preliminary objections has merit: the Prothonotary's docket number error can hardly be grounds for striking the objections, there is no time limit imposed by the Mechanic's Lien Law and 27 days is not "untimely", and the Rules of Civil Procedure apply only to the procedure to obtain judgment on a claim, Pa.R.C.P. 1651(b); the Mechanic's Lien Law, which applies to the procedure for perfecting the lien, does not require a Notice to Plead. Therefore, Plaintiff's preliminary objections will be overruled, and the Court will consider the preliminary objections filed by the College.

First, the College contends that Plaintiff is subject to a Waiver of Liens executed by Profast in favor of IMC and Penn College. The Court agrees. A copy of that Waiver is attached to the preliminary objections as Exhibit A. In paragraph 5 of that document, ProFast "waive[s], release[s] and relinquish[es] any and all liens, claims, charges, encumbrances and all claims or rights of lien ... against the Project, the property and improvements on which the Project is located ... with respect to any material, labor, service or equipment supplied by the undersigned or its Subcontractors ... to the Project or the property and improvements on which the Project is located." Such a waiver is binding on Plaintiff pursuant to 49 P.S. Section 1402(a):

§ 1402. Waiver by contractor; effect on subcontractor

(a) General rule.—To the extent that lien rights may be validly waived by a contractor or subcontractor under section 401(a) or where the contractor has posted a bond under section 401(b)(2), a written contract between the owner and a contractor, or a separate written instrument signed by the contractor, which provides that no claim shall be filed by anyone, shall be binding

² The preliminary objections were filed 27 days after the Claim was filed.

³ Plaintiff also attempts to raise as preliminary objections to the College's preliminary objections its assertions that (1) the materials were not furnished for a purely public purpose, (2) it did not waive its lien rights, and (3) the Claim was not defective when filed. These assertions are not proper objections, however, but, rather, are merely responses to the objections. The Court will therefore not separately address them but will only consider them in concert with the preliminary objections of the College.

Plaintiff contended at argument that this waiver is not binding as it was procured through fraud in the inducement, but such claim has not been raised in Plaintiff's Reply in Opposition to Defendant's Preliminary Objections and therefore will not be considered.

Inasmuch as Plaintiff is subject to a waiver of liens, the lien claim filed in this matter is invalid and will be stricken.⁴

ORDER

AND NOW, this 23rd day of December 2011, for the foregoing reasons, Defendant's preliminary objection based on waiver is hereby sustained. The Mechanic's Lien Claim filed September 1, 2011, to No. 11 – 90,284, is hereby STRICKEN.

The Prothonotary is directed to transfer the preliminary objections, all subsequent filings, and this Opinion and Order to No. 11 – 90,284, and to refund the Defendant's filing fee in the instant matter.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Prothonotary
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No. 11 – 01, 966

⁴ In light of this disposition, the Court will not address the remaining preliminary objections.