

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

RAND LEPLEY BUILDING	:	
CONTRACTOR, INC. d/b/a WETZEL	:	
BUILDING CO.,	:	
Claimant	:	NO. ML-20-90091
	:	
vs.	:	
	:	
THOMAS WOODRUFF, JR. and	:	
TAMI WOODRUFF,	:	MECHANIC'S LIEN
Owners	:	

OPINION

On June 1, 2020, Claimant filed a Mechanics' Lien Claim wherein it alleged that on March 19, 2020, it completed work to the Owner's property pursuant to a written contract, namely, the construction of the Owner's residence and work incidental to the construction of the residence. Claimant states that the Owners failed to pay it for the work completed which totals \$159,990.57. Claimant subsequently filed a Mechanics' Lien Complaint on August 14, 2020. Owners filed Preliminary Objections in the Nature of a Motion to Strike the Mechanic's Lien because the Mechanic's Lien was filed in violation of the terms of a Stipulation Against Liens signed by the parties. Claimant responded and argument was held on September 1, 2020.

Owners argue that the Stipulation Against Liens filed in Lycoming County on November 29, 2018 bars *all* claims for liens because Claimant waived that right by signing the Stipulation. Claimant admits that there is in fact a waiver of liens contained in the Stipulation Against Lien but argues that waiver applies *only*

to excavation costs and therefore, an effective waiver for the actual construction of the home does not exist.

The relevant language of the Stipulation Against Liens reads as follows:

Now, this ____ day of November, 2018, at the time of and immediately before the execution of the principal contract, and before any authority has been given by the said Thomas H. Woodruff and Tami Woodruff to the said Rand Building Co. to commence excavation of the lot, or to purchase materials or to begin construction for the same in consideration of the making of the said contract with Rand Building Co. and the further consideration of ONE DOLLAR, to Rand Building Co. paid by Thomas H. Woodruff and Tami Woodruff, it is agreed that **no lien shall be filed against the lot by the contractor**, or any sub-contractor, nor by any of the material men or workmen or any other person for any labor, **or materials purchased**, or extra labor **or materials purchased for the excavation of said lot**, the right to file such liens being expressly waived (emphasis added).

Under Pennsylvania law, it is clear that the right to file a mechanic's lien may be waived by agreement. *Formigli Corp. v. Fox*, 348 F. Supp. 629, 644 (E.D. Pa. 1972); 49 P.S. 1401(a) ("A contractor or subcontractor may waive his right to file a claim against residential property by a written instrument signed by him or by any conduct which operates equitably to estop such contractor from filing a claim"). "The cardinal rule of contract construction is that the intent of the parties at the time they contracted is controlling." *Motor Coils Mfg. Co. v. American Ins. Co.*, 454 A.2d 1044, 1047 (Pa.Super. 1982). In interpreting a contract, it is not appropriate for the Court to read the language of a contract selectively but rather, the Court should read the contract as a whole to give effect to its true purpose. *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962). The Court must interpret the terms of a contract as manifestly expressed in the contract. *Steuart v. McChesney*, 444 A.2d 659, 661 (Pa. 1982). It is not the Court's function to re-

write a contract into which two parties entered or to construct it in conflict with the plain meaning of the language used. *Hagarty v. William Akers, Jr. Co.*, 20 A.2d 317 (Pa. 1941).

Here, the issue is whether the above-referenced contract language waives all liens or only liens for the excavation of the property. Claimant would have us single out certain words or phrases. Specifically, Claimant asserts that the words “for the excavation of the said lot” modifies all prior listed items, such that it would read: “no lien shall be filed against the lot . . . for any labor *for the excavation of said lot*, or materials purchased *for the excavation of said lot*, or extra labor *for the excavation of said lot* or materials purchased *for the excavation of said lot*” When read this way, “materials purchased” is listed twice. Therefore, it is clear that the intent of the parties was to waive all liens and not just liens regarding excavation. The title of the stipulation, “Stipulation Against Liens” further evidences the parties intent since there is nothing excluding any liens other than those relating to the excavation.

Finally, Owners argue, and the Court agrees, that the Claimant attempts to use the “comma defense” to support its position. “The pertinent dictionary definition of the word ‘or’ is a ‘choice between alternative things, states, or courses.’” *Frenchak v. Sunbeam Coal Corp.*, 495 A.2d 1385, 1387 (Pa.Super. 1985) (citing Webster's Unabridged Third New International Dictionary), *disapproved of on other grounds by Hutchinson v. Sunbeam Coal Corp.*, 519 A.2d 385 (Pa.Super. 1986). The placement of a comma before the word “or” joins two independent clauses. *BL Partners Grp., L.P. v. Interbroad, LLC*, No. 465

EDA 2016, at *4 (Pa.Super. June 15, 2017), *citing* John E. Warriner, English Grammar and Composition (10 ed. 1965.), at 445. The relevant wording in the stipulation states, “for any labor, **or** materials purchased, **or** extra labor **or** materials purchased for the excavation of said lot” (emphasis added). The commas before the word “or” separates the phrases or words to make them independent clauses. Therefore, the three categories for which liens were waived by the Claimant are:

1. Any labor;
2. Materials purchased; and
3. Extra labor or materials purchased for the excavation of said lot.

For these reasons, the Stipulation Against Liens waives Claimant’s right to file liens for the above three categories. Therefore, the Owners’ Motion to Strike the Mechanic’s Lien and the related Complaint to enforce the Mechanic’s Lien is Granted.

ORDER

AND NOW, this 8th day of **September, 2020**, upon consideration of Owners' Preliminary Objections in the Nature of a Motion to Strike Mechanic's Lien and the Claimant's response thereto, Owners' Preliminary Objections are **SUSTAINED** and their Motion **GRANTED**. The Mechanic's Lien is stricken from the record and the Claimant's Complaint is dismissed.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: William Carlucci, Esquire
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