

EUGENE P. TROTTA,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff/Claimant	:	
	:	
vs.	:	NO. 00-90,496 and 01-00,605
	:	
ORLANDO NOVIELLO and	:	
SUSAN NOVIELLO,	:	
Defendants	:	MECHANICS' LIEN

Date: October 5, 2001

OPINION and ORDER

Before the Court is Defendant's Preliminary Objections filed on January 12, 2001. The objections were filed asking this Honorable Court to strike Plaintiff's Mechanics Lien filed on December 12, 2000. Defendant's objections are based on improper service by Plaintiff and failure to conform to law or rule of Court. Defendants filed their brief in support of the Preliminary Objections on June 6, 2001. Plaintiff's brief in Opposition was filed on June 19, 2001. A hearing and argument were held on June 22, 2001. A second, supplemental brief was filed by Defendants on June 29, 2001. For the reasons to be explained in this opinion, Defendant's Preliminary Objections will be SUSTAINED.

Discussion

Defendants filed Preliminary Objections to have Plaintiff's Mechanics Lien Claim stricken. The objections are based on three arguments: That Plaintiff failed to serve the proper written notice of filing the Mechanics Lien Claim, failed to file the necessary affidavit of service and failed to conform to the requirements as to what must be included in the Mechanics' Lien Claim.

The first issue addresses Plaintiff failing to serve the proper written notice of filing the Mechanics' Lien Claim. The Mechanics' Lien Law, 49 P.S. § 1502 (c) states: "Service of the notice of filing of claim shall be made by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon conspicuous public part of the improvement." The Mechanics Lien Law is a creature of Statute in derogation of the common law, and any questions of interpretation should be resolved in favor of a strict, narrow construction. (Defendant's Brief In Support of Preliminary Objection, p.1, June 6, 2001).

Defendants further assert that pursuant to The Pennsylvania Rules of Civil Procedure 400 and 402, that Plaintiff did not properly serve Defendants under the rules and therefore the Lien should be stricken. These rules state that original process within the Commonwealth shall be by the sheriff by handing a copy to the defendant or adult member of the family at his residence or adult person in charge of such residence or to defendants place of business to the person in charge thereof.

Section 1502 is specific in that it states that service shall be made in the same manner as a writ of summons in assumpsit. In assumpsit actions, service must be made by the sheriff. The exception of posting upon a conspicuous public part of the improvement, can only be done when service by the sheriff cannot be made. There are no facts, in the present case, to indicate that service by the sheriff could not have been made.

During the second week of December, Plaintiff argues that Defendant's attorney, Mr. Langdon, led him to believe that a resolution may transpire. Plaintiff had filed his Lien on December 12, 2000, and had 30 days to serve Notice of Filing of Claim. When

Plaintiff went to the Sheriff's Department to have them effectuate service, the Sheriff's Department could not guarantee service on such short notice. On January 4, 2001, Plaintiff sent Kati M. Jacobs to the building to post Notice of Filing of Claim upon the improvement.

The posting on January 4, 2001, is an unacceptable means of service. Plaintiff's reliance on Defendant's assertion that a resolution was feasible was no excuse for the Plaintiff to not effectuate service. If service could not be made in a reasonable time by the Sheriff's Department, then it was Plaintiff's duty, under the rules, to request a special order directing the method of service. This requesting motion must have an affidavit attached stating the nature and extent of the "investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made" (Pa.R.C.P. 430).

Therefore, Plaintiff had the requisite thirty days to properly serve the Lien on Defendants, however, when he realized that service by the Sheriff was improbable, Plaintiff needed to request a special order, from the Court, before posting the property.

The second issue Defendant raises is that Plaintiff failed to file the necessary affidavit of service. 49 P.S. §1502(a)(2) states: "An affidavit of service of notice, or the acceptance of service, shall be filed within twenty (20) days after service setting forth the date and manner of service. Failure to serve such notice or to file the affidavit or acceptance of service within the times specified shall be sufficient ground for striking off the claim."

It has been established at argument that Plaintiff posted the property on January 4, 2001, and that on January 22, 2001, Plaintiff filed an affidavit of service. However, section 1502 (c) of the Mechanics' Lien Law, specifically states that posting is permitted only when personal service "cannot be made." There is no allegation that personal service could not be

made upon Claimants/Owners. Therefore, since Plaintiff failed to serve proper written notice of filing the Mechanics' Lien Claim within one month after filing the Mechanics' Lien Claim, and since he has failed to file a proper affidavit of service within the twenty days after service, the Mechanics' Lien shall be stricken.

The final issue Defendants raise is that Plaintiff failed to conform to the requirements as to what must be included in the Mechanics' Lien Claim. 49 P.S. §1503(a)(2) requires the Claimant to state in the Mechanics' Lien Claim the name and address of the owner or reputed owner.

Plaintiff sets forth the address of the owners as "6 & 8 South Main Street, Muncy, PA. 17756, the address of the property claimed to be the subject of the Mechanics' Lien Claim. The residential address of the owners is actually 613 South Main Street, Muncy, PA. 17756.

Furthermore, 49 P.S. §1503(8) says that a claim shall state a description of the improvement and of the property claimed to be subject to the lien as may be reasonably necessary to identify them. Defendants argue that Plaintiff failed to use a Lycoming County Tax Parcel number, refer to the county in which the property was located, use a deed reference or use a metes and bounds description. As to this issue only, the court finds that the accurate address of the property subject to the lien, is sufficient and reasonable for identification in this particular case.

Therefore, while the description of the property in §1503 will suffice, it is irrelevant due to the fact that the claim must be stricken because of Plaintiff's failure to serve

the proper written notice of filing the Mechanics' Lien Claim, and for failing to file the necessary affidavit of service.

ORDER

Defendants' Preliminary Objections are hereby SUSTAINED.

BY THE COURT:

William S. Kieser, Judge

cc: Eugene P. Trotta
300 South Main Street; Muncy, PA 17756
J. Howard Langdon, Esquire
Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)