

Adams County **Legal Journal**

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IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
NO. 2011-S-1482

IN RE. PETITION FOR CHANGE OF
NAME OF JACOB JON SMALL

NOTICE

NOTICE IS HEREBY GIVEN that on October 6, 2011 the petition of Jacob Jon Small was filed in the above-named Court, requesting an Order to change the name of Jacob Jon Small to Jacob Jon Orner.

The Court has fixed the day of January 6, 2012 at 8:30 a.m. in Courtroom Number 4, Third Floor of the Adams County Courthouse, 111 Baltimore Street, Gettysburg, Pennsylvania as the time and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioner should not be granted.

11/4

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
NO. 2011-S-1294

IN RE. PETITION FOR CHANGE OF
NAME OF CODY JAMES BAUGHER-
HUGHES

NOTICE

NOTICE IS HEREBY GIVEN that on August 30, 2011 the petition of Cody James Baugher-Hughes was filed in the above-named Court, requesting an Order to change the name of Cody James Baugher-Hughes to Cody James Hughes.

The Court has fixed the day of December 9, 2011 at 8:30 a.m. in Courtroom Number 4, Third Floor of the Adams County Courthouse, 111 Baltimore Street, Gettysburg, Pennsylvania as the time and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioner should not be granted.

11/4

SHERIFF SALES

IN PURSUANCE of a writ of execution issuing out of the Court of Common Pleas of Adams County, Pennsylvania, and to me directed, will be exposed to Public Sale on FRIDAY, the 18th day of November 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Adams County Courthouse, 111 Baltimore Street, Gettysburg, Adams County, PA, the following real estate, viz.:

Writ of Execution No.:

2011-SU-0000354

Property Address: 405 Main Street,

York Springs, PA 17372

Municipality: York Springs

Parcel No.: 42-2-6

Improvements: Erected a Dwelling

House

Defendants: Nora C. Bream

Attorneys for Plaintiff: Leon P. Haller,

Esq., 717-234-4178

Notice directed to all parties in interest and claimants that a schedule of distribution will be filed by the Sheriff in his office no later than (30) thirty days after the date of sale and that distribution will be made in accordance with that schedule unless exceptions are filed thereto within (10) ten days thereafter. Purchaser must settle for property on or before filing date. ALL claims to property must be filed with Sheriff before sale date.

AS SOON AS THE PROPERTY IS DECLARED SOLD TO THE HIGHEST BIDDER, 20% OF THE PURCHASE PRICE OR ALL OF THE COST, WHICHEVER MAY BE THE HIGHER, SHALL BE PAID FORTHWITH TO THE SHERIFF.

James Muller

Sheriff of Adams County

<http://www.sheriffofadamscounty.com/sheriffsales.html>

10/21, 28 & 11/4

CERTIFICATE OF AUTHORITY

Pursuant to 15 Pa. C.S. § 4124(b), the American Board of Wound Medicine and Surgery, Inc., an Ohio non-profit corporation, organized on October 20, 2011, formed under the laws of the State of Ohio, intends to submit its application for a certificate of authority to operate as a foreign non-profit corporation in the state of Pennsylvania, more particularly, Adams County, Pennsylvania.

The principal office of the non-profit corporation is 2625 Commons Blvd., Beavercreek, Ohio and the address for the registered office is 267 Mt. Tabor Road, Gardners, PA 17324.

11/4

KIMBOB VS. HACC

1. Historically, our appellate courts have interpreted the language of the Mechanics' Lien Law to mean that a lien cannot attach to land for work unconnected with the construction of a building or other permanent structure.

2. This Court has previously held that the grading and construction of a parking lot and walks is not part of the "erection and construction" of a restaurant, and therefore, such labor and material would not be subject to a mechanics' lien even though such parking area would be part of the curtilage that would be subject to a lien for the payment of debts due in the erection and construction of the restaurant.

3. A distinguishing characteristic as to whether or not a mechanics' lien may attach for work done and materials furnished for the paving of a parking area is whether or not that work was included within the general contract for the construction of the building itself.

4. In order for a lien to attach for paving work, such work must be *incidental* to the erection, construction, alteration or repair. To be incidental to the construction or repair of an improvement, the paving work must be likely to ensue as a consequence of the building, construction or repair.

In the Court of Common Pleas of Adams County, Pennsylvania.
Civil, No. 10-S-807, KIMBOB, INC. VS. HARRISBURG AREA
COMMUNITY COLLEGE.

James G. Gault, Esq., for Plaintiff

Ronald H. Pollock, Jr., Esq., for Defendant

Campbell, J., June 8, 2011

OPINION

Before the Court are the Preliminary Objections of Owner/Respondent, Harrisburg Area Community College (hereinafter "HACC") to the Mechanics' Lien claim of Kimbob, Inc. (hereinafter "Kimbob"). An evidentiary hearing and argument was held April 20, 2011. The parties have been afforded an opportunity to fully brief the issues before the Court, and the matter is ripe for disposition.

HACC raises three (3) objections to the Mechanics' Lien claim of Kimbob, specifically: 1) that the work performed by Kimbob does not qualify for a Mechanics' Lien; 2) that HACC is a non-profit entity serving the general public and, therefore, is not subject to a Mechanics' Lien; and 3) that the Mechanics' Lien claims of Kimbob provides insufficient detail concerning the location of the work done or the property subject to lien.

The factual record shows that HACC is a community college operating its Gettysburg Campus at 731 Old Harrisburg Road, Gettysburg, Adams County, Pennsylvania. On October 7, 2009,

HACC entered into an agreement with Kimbob for the repair and resurfacing of existing drives and parking lots at the Gettysburg Campus. **HACC Ex. 1.** Work commenced shortly after the agreement was entered into. On November 16, 2009, a certificate of substantial completion for the project was issued by HACC to Kimbob. Between October 7, 2009 and November 16, 2009, there was no other construction occurring on the HACC Gettysburg Campus.

Previously, on June 4, 2008, HACC entered into a construction contract with ECI Construction, LLC for a major renovation of the HACC Gettysburg Campus. Pursuant to that contract, the only exterior improvements made by ECI Construction, LLC were installation of a sidewalk, curbing and landscaping. Kimbob was not a party to the ECI contract. A certificate of substantial completion was issued to ECI for its renovation contract on January 26, 2009, a little over eight (8) months before the paving contract at issue was entered into between HACC and Kimbob.

Then, after Kimbob completed its work pursuant to the paving contract at issue, HACC entered into another contract, this time with East Coast Contracting, Inc., for interior renovations to its welcome center and office space, as well as renovations to the building located at the south end of the Gettysburg Campus. This third contract was entered into between HACC and East Coast Contracting on December 2, 2009, after all of Kimbob's repaving and resurfacing work was completed and after the certificate of substantial completion was delivered to Kimbob.

The three (3) projects undertaken by HACC on its Gettysburg Campus were all subject to different contracts and none of the work from any of the three (3) projects overlapped work being performed on a different project. According to testimony elicited at hearing all three (3) contracts, including the Kimbob repaving and resurfacing contract, were independent from the other contracts. Additionally, testimony revealed that HACC had no preplanned decision to do all of these projects and that the work performed in each project was unrelated to the work being performed on the other projects. The repair, repaving and resurfacing of the existing roadways and parking lots was not necessitated by the original renovation project undertaken by ECI Construction.

On May 11, 2010, five (5) days shy of six (6) months after the issuance of the certificate of substantial completion, Kimbob filed the

instant Mechanics' Lien against HACC for work, labor, equipment and materials related to the repaving and resurfacing project at the HACC Gettysburg Campus. The total amount claimed to be due and owing is \$125,000.00. In response, pursuant to Section 1505 of the Mechanics' Lien Law, HACC filed the instant Preliminary Objections.

Because Mechanics' Liens are an extraordinary remedy, a contractor or subcontractor must be in strict compliance with the requirements of the Mechanics' Lien Law. *Martin Stone Quarries, Inc. v. Robert M. Koffel Builders*, 786 A.2d 998, 1002 (Pa. Super. 2001); see also *Cornerstone Land Dev. Co. of Pittsburgh, LLC v. Wadwell Group*, 959 A.2d 1264, 1271 (Pa. Super. 2008). When issues of fact are raised by preliminary objections to a mechanics' lien claim, a trial court may receive evidence by depositions or otherwise. **49 Pa. C.S. § 1505**. Instantly, upon receiving preliminary objections, this Court held a hearing April 20, 2011 to take testimony concerning the objections raised. Preliminary objections in a mechanics' lien proceeding should be sustained only in cases which are clear and free from doubt. *Denlinger, Inc. v. Agresta*, 714 A.2d 1048, 1050 (Pa. Super. 1998).

HACC first argues that Kimbob's efforts to place a Mechanics' Lien on HACC's property is improper because the work performed by Kimbob in repairing and resurfacing existing roadways and parking lots was not incidental to the erection or construction of a building or permanent structure.

Because mechanics' liens are a creature of statute, it is important to strictly consider the language of the Mechanics' Lien Law. The act provides that contractors may subject every improvement to a lien for the payment of debts due for labor or materials furnished in the erection or construction, alteration or repair of the improvement. **49 Pa. C.S. § 1301**. "Improvement" is defined as "any building, structure or other improvement of whatsoever kind or character, erected or constructed on land, together with fixtures and other personal property..." **49 Pa. C.S. § 1201(1)**. The act goes on to define "erection, construction and alteration or repair" as including "excavation, grading, filling, paving and landscaping, *when such work is incidental to the erection, construction, alteration or repair.*" **49 Pa. C.S. § 1201(12)(a) (emphasis added)**. The comment by the Joint State Government Commission (1964 Report) discussing the foregoing language notes that "Subsection (a) declares existing decisional law with respect to such work upon the ground as demolition, grading,

landscaping which is incidental to the erection, construction, alteration or repair of an improvement, as compared to such work when it is performed independently of any erection, construction, alteration or repair of an improvement, *in which latter case no lien is allowed*. **49 Pa. C.S. § 1201, Comment, Joint State Gov't Comm'n 1964 Report, Subdivision (12) (emphasis added).**

Historically, our appellate courts have interpreted the language of the Mechanics' Lien Law to mean that a lien cannot attach to land for work unconnected with the construction of a building or other permanent structure. *King's Oak Liquidators v. Bala Cynwyd Hotel Assoc.*, 592 A.2d 102, 103 (Pa. Super. 1991); see also *Sampson-Miller Associated Companies, Inc. v. Landmark Realty Co.*, 303 A.2d 43, 45-46 (Pa. Super. 1973) (noting that no mechanics' lien can attach to land for clearing, excavating, grading the land, installation of storm sewers, sanitary sewers, paving and curbing, and seeding that was unconnected to the construction of a building). Further, this Court has previously held that the grading and construction of a parking lot and walks is not part of the "erection and construction" of a restaurant, and, therefore, such labor and material would not be subject to a mechanics' lien even though such parking area would be part of the curtilage that would be subject to a lien for the payment of debts due in the erection and construction of the restaurant. *Hamme v. Lockamy*, 34 Pa. D. & C.2d 462, 466 (C.P. Adams July 2, 1964).

As noted by President Judge Sheely in *Hamme*, a distinguishing characteristic as to whether or not a mechanics' lien may attach for work done and materials furnished for the paving of a parking area is whether or not that work was included within the general contract for the construction of the building itself. In support, Judge Sheely cited *Yearsley v. Flanagan*, 22 Pa. 489 (1854), which held that where a contract is made with a bricklayer to do all the brick and stone work about the erection of a building, which contract by its terms includes the laying of the pavement, as it is an entirety a mechanics' lien may be filed within six (6) months from completion of the work...the work upon the pavement may be included in the lien. As Judge Sheely noted in *Hamme* and as is the case here, where the claimant had nothing to do with the erection of the building, where the building had already been erected by another contractor when the contract for paving was made, no mechanics' lien may attach. *Hamme*, 34 Pa. D. & C. 2d at 465.

In order for a lien to attach for paving work, such work must be *incidental* to the erection, construction, alteration or repair. **49 Pa. C.S. § 1201(12)(a) (emphasis added)**. To be incidental to the construction or repair of an improvement, the paving work must be likely to ensue as a consequence of the building, construction or repair.

Instantly, it is clear that the resurfacing and paving work which is the subject of the contract between HACC and Kimbob was not included within a larger general construction contract for the erection, alteration, improvement or repair of the existing building. To the contrary, the separate and independent contract between HACC and ECI Construction for the renovation of the existing building was substantially completed eight (8) months before HACC entered into the instant contract for repaving and resurfacing with Kimbob. In addition, there are no averments nor was there any testimony elicited that the resurfacing and repaving project was necessitated by the work of ECI Construction in the renovation of the existing building, or likely to ensue as a result of the building renovation. To the contrary, all evidence and testimony suggested that the renovation work performed by ECI Construction had no bearing upon the condition of the driveways, roadways and parking area being repaved and resurfaced by Kimbob. Accordingly, because the work, materials and labor performed and furnished by Kimbob was not incidental to the erection, construction, alteration or repair of a building, Kimbob's Mechanics' Lien is improper pursuant to the Mechanics' Lien Law. Because the claim fails to conform with the requirements of the Mechanics' Lien Law, it must be stricken.

Having found that Kimbob's work was not incidental to the construction or erection, alteration or repair of the existing building, this Court need not address HACC's second and third objections. Because Kimbob has failed to set forth a claim for mechanics' lien as required by the Mechanics' Lien Law, 49 P.S. § 1201 et. seq., and for the reasons set forth herein, HACC's first Preliminary Objection shall be sustained, and the attached Order shall be entered.

ORDER OF COURT

AND NOW, this 8th day of June 2011, Owner/Respondent's first Preliminary Objection in the nature of a demurrer is sustained. The Adams County Prothonotary is directed to strike the Mechanics' Lien. The action is dismissed.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF VIRGINIA D. EPLEY, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Donald Dubbs, Jr., 835 Centennial Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF CHARLES F. MORRIS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Judith Koper Morris, 845 Hostetter Road, Hanover, PA 17331

Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF VIOLET H. PFALTZGRAFF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: John R. Gibbel, c/o John R. Gibbel, Esq., Gibbel Kraybill & Hess LLP, P.O. Box 16, Lititz, PA 17543

Attorney: John R. Gibbel, Esq., Gibbel Kraybill & Hess LLP, P.O. Box 16, Lititz, PA 17543

ESTATE OF GEORGE E. SHEALER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Sally Ann Hertzog, c/o Robert G. Teeter, Esq., Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

Attorney: Robert G. Teeter, Esq., Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF HAZEL M. FROCK, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrices: Lona Stoops, 3480 Emmitsburg Road, Gettysburg, PA 17325; Linda Hobbs, 11614 Taneytown Pike, Emmitsburg, MD 21727

Attorney: Robert L. McQuaide, Esq., 18 Carlisle Street, Suite 204, Gettysburg, PA 17325

ESTATE OF CHARLES W. KING, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Robert E. King, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF KIMBERELY A. SHIPLEY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Dennis A. Wyatt, 2313 Stoney Point Road, East Berlin, PA 17316

Attorney: Jan M. Wiley, Esq., The Wiley Group, P.C., 3 N. Baltimore Street, Dillsburg, PA 17019

THIRD PUBLICATION**ESTATE OF TOBIAS A. BOWERS, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Scott A. Bowers, 5309 Henden Wood Lane, Frederick, MD 21703

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DENNIS E. BRANDT, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: James Eckart, 30 Coyote Trail, Whitehall, MT 59759

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF JOYCE A. FUNT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Kimberly A. Funt, P.O. Box 324, Arendtsville, PA 17303

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF DAWN D. JOHNS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Karen Lee Redding, 1001 Herrs Ridge Road, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., 18 Carlisle Street, Suite 204, Gettysburg, PA 17325

ESTATE OF SILAS H. KNELLER, SR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Darlene Wherley, Silas H. Kneller, Jr., Paul Kneller, Wanda Crawford, c/o James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York St., Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York St., Hanover, PA 17331

ESTATE OF HAZEL V. KOPP a/k/a HAZEL KOPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Norman L. and Helen A. Wentz, P.O. Box 33, 23 York Street, Codorus, PA 17311

Attorney: Timothy J. Shultis, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF RICHARD REILLY, a/k/a RICHARD "KNUTE" REILLY, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Andrea Lee Reilly, 80 Heritage Dr., Gettysburg, PA 17325

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 28 West Middle St., Gettysburg, PA 17325

ESTATE OF ERNEST L. SHELLEMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrices: Patricia A. Galanopoulos a/k/a Patricia A. Shellemann, 426 Marion Road, York, PA 17406; Melissa A. Haynes, a/k/a Melissa A. Shellemann, 2101 Edgewater Circle SE, Winter Haven, FL 33880

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

ESTATE OF RUTH E. SULLIVAN, a/k/a RUTH ELLEN SULLIVAN, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Patrick D. Sullivan, 19 Center Square, New Oxford, PA 17350

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

(continued on page 4)

THIRD PUBLICATION (CONTINUED)

ESTATE OF PATTY J. TIMMONS, DEC'D

Late of the Borough of Gettysburg,
Adams County, Pennsylvania

Administrator: Charles H. Lightner,
572 Idaville-York Springs Road,
Gardners, PA 17324

Attorney: Teeter, Teeter & Teeter, 108
W. Middle St., Gettysburg, PA 17325

ESTATE OF MILLARD H. WOLFGANG,
JR., DEC'D

All persons having claims or demands
against the estate of Millard H.
Wolfgang, Jr., deceased, late of Oxford
Township, Adams County, Pennsylvania,
are requested to present the same
without delay to Jennifer A. Leib, M&T
Bank, 13 Baltimore Street, Hanover,
Pennsylvania, 17331. In addition, all
persons having claims or demands
against the Millard H. Wolfgang, Jr. and
the Millard H. Wolfgang, Jr. Trust dated
May 29, 1998, are requested to present
the same without delay to Jennifer A.
Leib, M&T Bank, 13 Baltimore Street,
Hanover, Pennsylvania, 17331, Trustee.

Attorney: Jon C. Countess, Esq., CGA
Law Firm, PC, 135 North George
Street, York, PA 17401