IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ASPHALT CARE COMPANY, INC.	:	
	:	May Term 2004
Plaintiff,	:	
v.	:	No.: 1102
	:	
WENDY'S OLD FASHIONED HAMBURGERS of NEW YORK, INC.	:	Commerce Program
	:	Control No.: 062724
Defendant	:	

O R D E R

AND NOW, this 22ND day of October, 2004, upon consideration of Defendant's unopposed Preliminary Objections to Plaintiff's Complaint Upon a Mechanics Lien Claim, it is hereby **ORDERED** and **DECREED** that Defendant's Preliminary Objections are **SUSTAINED** and the Complaint is **DISMISSED**.

BY THE COURT,

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C. DARNELL JONES, II, J.

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	:	May Term 2004
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HAMBURGERS of NEW YORK, INC.	:	
	:	Control No.: 062724
Defendant	:	

MEMORANDUM

JONES, J.

Presently before the court is Defendant Wendy's Old Fashioned Hamburgers of New York, Inc.'s ("Wendy's") unopposed Preliminary Objections to Plaintiff Asphalt Care Company, Inc.'s ("Asphalt Care") Complaint Upon a Mechanics Lien Claim.

Wendy's asserts that Asphalt Care failed to comply with the notice requirements of 49 Pa.C.S. §1501(a). Under this statute, a subcontractor who engages in alterations or repairs to a property needs to give the owner of the property notice of its intention to file a mechanics' lien prior to completing its work on the project. An "alteration or repair" is "any alteration or repair of an existing improvement which does not constitute erection or construction." 49 Pa.C.S. §1201(11). "Erection or construction" is "the erection and construction of a new improvement or of a substantial addition to an existing improvement or any adaptation of an existing improvement rendering the same fit for a new or distinct use and effecting a material change in the interior or exterior thereof." 49 Pa.C.S. §1201(10).

According to the mechanics' lien claim, Asphalt Care was the subcontractor and Wendy's the owner of a property for which Asphalt Care "pav[ed] 2 inches over the

existing parking lot." Asphalt Care drafted the contract between itself and the contractor for which Asphalt Care performed the paving work and the contract states that Asphalt Care will "RESURFACE EXISTING LOT." These facts make clear that Asphalt Care's work was not an "erection or construction" within the meaning of the statute. Therefore, Asphalt Care needed to provide Wendy's with notice of its intention to file the mechanics' lien claim. In providing Wendy's with formal notice of its intent to file a lien on March 15, 2004, Asphalt Care indicated that the work had been completed on December 16, 2003. There is nothing in the record to indicate that Wendy's received any notice from Asphalt Care prior to the completion date. Therefore, Asphalt Care has not met the requirements of 49 Pa.C.S. §1501(a) and Defendant's objections are sustained. See City Lighting Prods. Co. v. Carnegie Inst., 816 A.2d 1196 (Pa. Super. 2003) (affirming preliminary objections sustained for subcontractor's failure to provide preliminary notice).

BY THE COURT,

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C. DARNELL JONES, II, J.