

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

WYATT INCORPORATED,	:	August ^{July} Term 2020
	:	
Claimant	:	No. M0001
v.	:	
TEMPLE UNIVERSITY,	:	
	:	COMMERCE PROGRAM
Owner.	:	
	:	Control Number 20080224
	:	

ORDER

AND NOW, this 13th day of October, 2020, upon consideration of Temple University's statutory preliminary objections to the Mechanics' Lien Claim, Wyatt Incorporated's response in opposition and the attached Opinion, it hereby is **ORDERED** that the Preliminary Objections are **Sustained** and the Lien is **Stricken**.

BY THE COURT



RAMY I. DJERASSI, J.

Wyatt Incorporated Vs T-ORDRF



20070000103014

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TEMPLE UNIVERSITY,	:		
	:		
Owner.	:	COMMERCE PROGRAM	
	:		
	:	Control Number 20080224	

OPINION

This is a mechanics' lien action. Presently before the court are the preliminary objections of the owner Temple University ("Temple") to claimant Wyatt Incorporated's ("Wyatt") mechanics' lien claim. For the reasons discussed below, the preliminary objections are sustained and the lien is stricken.

On April 17, 2017, Gilbane Building Company ("Gilbane") entered into a contract with Temple University for \$14,858,942.78 for a project at Speakman Hall, 1801-35 N. Broad Street (1810 N. 13th Street), Philadelphia, PA 19122, and the 1810 Liacouras Walk Building, 1801-35 N. Broad Street (1810 Liacouras Walk), Philadelphia, PA 19122 ("Project"). On September 8, 2017, Travelers Casualty and Surety Company of America ("Surety") issued a payment bond on the Project, with Gilbane as contractor/principal and Temple as owner, guaranteeing payment for labor and materials provided by subcontractors on the Project.

On September 12, 2017, Temple filed with the prothonotary of the Court of Common Pleas of Philadelphia County three Waivers of Liens signed by Gilbane docketed at 1709W0005, 1709W0006, 1709W0007, respectively, indicating that a payment was posted for the benefit of subcontractors on the project.

Gilbane and Wyatt entered into a subcontract for Wyatt to perform terra cotta work on the Project. Wyatt signed the subcontract on August 22, 2017 and Gilbane signed the subcontract on September 20, 2017. Section 3.7 of the Subcontract provides as follows:

The Trade Contractor [Wyatt] shall save and keep the Construction Manager [Gilbane], its Surety, if applicable, the Owner [Temple], and the Owner's property free and clear from all mechanics' and materialmen's liens, construction liens, and all other liens as well as any and all bond claimants, bond claims, or any other claims or actions, legal or equitable, arising out of Trade Contractor's [Wyatt] work hereunder. In the event that any such lien, bond or other claim or action is asserted, threatened or filed by anyone claiming by, through, or under the Trade Contractor [Wyatt], then the Trade Contractor [Wyatt] shall remove and discharge same, either by bonding or otherwise removing, paying or releasing same, within five (5) calendar days of the notice of such lien, claim or action.

On July 2, 2020, Wyatt filed a mechanics' lien claim against Temple. On August 4, 2020, Temple filed these preliminary objections seeking to strike the bond based on waiver. The preliminary objections are now ripe for disposition.

DISCUSSION

The Mechanics' Lien law allows a subcontractor, such as Wyatt in this instance, to waive its right to file a mechanics' lien claim under limited circumstances.¹ Here, since the property at issue is a nonresidential building², 49 § 1401 (b) (2) Waiver of Lien by Claimant is applicable.

Title 49 § 1401 (b) (2) provides in pertinent part as follows:

(b)Nonresidential Buildings.

....

(2) Except as provided in subsection (a), [Residential Property] a waiver by a subcontractor of lien rights is against public policy, unlawful and void, unless given in consideration for payment of the work, services, materials or equipment provided and

¹ See, 49 P.S. § 1401 (b)(2).

² The parties in this action rely upon 49 P.S. § 1401(b)(2) addressing waiver of liens for nonresidential buildings by subcontractors in their papers to support their positions. Based on the foregoing, the court finds that the type of building, residential versus nonresidential, is not in issue.

only to the extent that such payment is actually received, or unless the contractor has posted a bond guaranteeing payment for labor and materials provided by subcontractors.

In the subcontract agreement between Wyatt and Gilbane, Wyatt specifically agreed to “save and keep the Construction Manager [Gilbane]...and the Owner [Temple] and the Owner’s [Temple] property free and clear from all mechanics’...liens, ...arising out of the Trade Contractor’s [Wyatt] work hereunder.” This language constitutes an express waiver by Wyatt of its right to assert mechanics’ liens against Temple’s property. While the court acknowledges Wyatt’s argument that § 3.7 pertains to the rights of others to file a lien, the court cannot ignore the plain language of § 3.7 in which Wyatt also agreed to keep Temple’s property free and clear of mechanics’ liens arising from its work. Consequently, Wyatt expressly waived its right to file a mechanics’ lien related to its work on the Project.

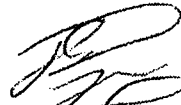
As made clear by § 1401 (b) (2), supra, an express waiver by a subcontractor to file a mechanics’ lien is not effective in this case unless Gilbane “has posted” a payment bond guaranteeing payment for labor and material provided by the subcontractors. Here, it is undisputed that Gilbane posted such a bond on September 8, 2017 for the benefit of its subcontractors on the Project. Contrary to Wyatt’s argument, this bond is valid even though the bond was posted more than two weeks after Wyatt signed the subcontract. Title 49 P.S. § 1401 (b)(2) does not set a definite time requirement for a contractor to post a bond and we will not arbitrarily impose such a requirement. Moreover, while Wyatt signed the subcontract on August 17, 2017 before the bond was posted, the filing of the bond on September 12, 2017 and Gilbane’s execution of the subcontract on September 20, 2017 quickly followed without actual prejudice to anyone.³

³ The court need not consider 49 P.S. § 1402 since Wyatt, the claimant, expressly waived its right to file a mechanics’ lien in the subcontract and therefore consideration of Gilbane’s waiver of subcontractors’ rights is unnecessary.

CONCLUSION

Based on the foregoing, Wyatt waived its right to file a mechanics' lien and this waiver governs this case. Temple University's preliminary objections are sustained and the lien is stricken.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Ramy I. Djerassi', is written over a horizontal line.

RAMY I. DJERASSI, J.