

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

LITTLE WASHINGTON FABRICATORS  
INC,

Plaintiff(s)

vs.

NATIONAL METALCRAFTERS  
BUILDING LLC

AND

1400 EAST OXFORD LLC,  
Defendants(s)

PHILADELPHIA COUNTY  
COURT OF COMMON PLEAS

Case No. 2206M0003

COMMERCE PROGRAM

**ORDER**

AND NOW, this 24<sup>th</sup> day of January, 2025, upon conclusion of a one day bench trial held before this Court on January 22<sup>nd</sup>, 2025, and after review of testimony, Exhibits, and all other relevant fillings of record, it is hereby **ORDERED** and **DECREED** that the Court finds in favor of the Defendants and against Plaintiff as to Plaintiff's Mechanics' Lien claim.

**IT IS FURTHER ORDERED** that the Mechanics' Lien is **STRICKEN**. The Court's Ruling is based upon its findings herein attached.

**DOCKETED**

**JAN 24 2025**

**R. POSTELL  
COMMERCE PROGRAM**

**BY THE COURT:**

  
**PAULA A. PATRICK, J.**

ORDOP-Little Washington Fabricators, Inc. Vs National Me [RCP]



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## **1. INTRODUCTION AND PROCEDURAL HISTORY**

This Matter comes before the Court as an action to enforce a Mechanics' Lien Claim by Plaintiff Little Washington Fabricators Inc. ("Plaintiff" and "Little Washington") against National Metalcrafters Building LLC and 1400 East Oxford LLC ("Defendants"). Defendants are the record owners or reputed owners of the premises known as the "National Metalcrafters Building," 1400, 1408-20 E. Oxford Street, Philadelphia, Pennsylvania. Plaintiff served Notice of its intention to file this lien claim on Defendants by certified and regular mail on or about May 2, 2022. Plaintiff instituted this action by filing a Mechanic's Lien ("Lien") on June 2, 2022. In its Lien, Little Washington sought a sum of \$209,945.00 plus interest, costs and such other fees which might accrue from the date of the lien's filing due and owing for work completed on the premises. Defendants filed its Preliminary Objections on October 3, 2022, arguing that Plaintiff's given January 6, 2022 date for when it last supplied labor could not be used in the Lien calculation because the delivery was for missing materials. Plaintiff filed its reply to the Preliminary Objections on October 19, 2022. The Court issued an Order overruling Defendants' Preliminary Objections on February 14, 2023.

On February 22, 2023, Plaintiff filed a Complaint to Obtain Judgment on Mechanics' Lien Claim. Defendants filed an Answer to Claimant's Complaint to Enforce Mechanic's Lien on March 3, 2023. Plaintiff filed its Reply to New Matter on March 16, 2023. On November 12, 2024, Plaintiff filed a Motion in Limine to preclude Defendants from presenting evidence of set-off or "owner's damages" at the trial. The Court granted this motion on January 8, 2025. On January 22, 2025, the Court held a two-day bench trial wherein testimony was heard and the parties entered exhibits into evidence. Upon conclusion of the bench trial, and after due review of the parties' testimony, exhibits, as well as all other relevant filings of record, the Court finds in favor of Defendants and against Plaintiff.

## **2. FACTUAL HISTORY:**

Plaintiff Little Washington Fabricators, Inc. entered into a subcontract with the property owner Defendants Metalcrafters Building LLC and 1400 East Oxford LLC's general contractor, Level Up Development, LLC dated for April 5, 2021.<sup>1</sup> The subcontract was originally for fabrication and erection of structural steel. Plaintiff contends it encountered labor issues at the site, and that Level Up's Project Manager Ed Cahan agreed on October 29, 2021 to remove the erection scope from Plaintiff's subcontract, leaving only the steel fabrication and delivery as its duties under the contract. Defendants retained Tamburri Steel, LLC to finish out Plaintiff's duty to erect the structural steel.<sup>2</sup> Plaintiff stated in its claim that it supplied labor and materials until January 6, 2022.<sup>3</sup> Defendants contested this, arguing that the final date of delivery was set for October 6, 2021. In a separate proceeding, Plaintiff was the subject of a Chapter 11 Bankruptcy filed on March 2, 2022, captioned *In re: Little Washington Fabricators, Inc.*, E.D. Pa. Bankr. 22-10695-pmm. Plaintiff claims that the unpaid debt was a primary contributing factor to its March bankruptcy filing.<sup>4</sup>

As further reasoned below, the Court finds in favor of the Defendants and concludes that the Plaintiff has failed to perfect its lien.

## **3. FINDINGS AND CONCLUSIONS:**

The Court finds that the Plaintiff has failed to perfect its Mechanics' Lien and strikes the Lien.

Before the Court can ascertain to the law, the Court must ascertain the true facts. The facts are determined by the testimony, supported and substantiated by the evidence. Under the

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<sup>1</sup> See Exhibit P-1, 1-8.

<sup>2</sup> See Defendant's Preliminary Objection, pg. 3 at ¶ 4

<sup>3</sup> See Exhibit D-1, at page 2 ¶ 6

<sup>4</sup> See Plaintiff's Settlement Conference Memorandum, at page 2

Pennsylvania Rules of Civil Procedure, “The trial of actions upon mechanics’ liens by a judge sitting without a jury shall be in accordance with [Pa. R.C.P.] 1038.” Pa. R.C.P. § 1661. Under § 1038, Non-jury trials shall be conducted as nearly as may be as a trial by jury is conducted and the parties shall have like rights and privileges. Pa. R.C.P. § 1038. “The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of the jury.” *Allegheny Energy Supply Co., LLC v. Wolf Run Min. Co.*, 53 A.3d 53, 60 (Pa. Super. 2012). A trial court’s decision on its findings of fact will only be reversed if they are not supported by competent evidence in the record or if its findings are premised on an error of law. *Gamesa Energy USA, LLC v. Ten Penn Ctr. Assocs., L.P.*, 181 A.3d 1188, 1191 (Pa. Super. 2018); *Allegheny Energy Supply Co., LLC v. Wolf Run Min. Co.*, 53 A.3d 53, 60 (Pa. Super. 2012).

Mechanics’ Liens in Pennsylvania are governed under 49 P.S. §§ 1101 et seq, which provides an extraordinary remedy for contractors to expeditiously secure payment for work and labor performed on real property. *Terra Firma Builders, LLC v. King*, 249 A.3d 976, 983 (Pa. 2021). Under 49 P.S. § 1503, Pennsylvania requires that the claim include the following statements:

- (1) the name of the party claimant, and whether he files as contractor or subcontractor;
- (2) the name and address of the owner or reputed owner;
- (3) the date of completion of the claimant's work;
- (4) if filed by a subcontractor, the name of the person with whom he contracted, and the dates on which preliminary notice, if required, and of formal notice of intention to file a claim was given;
- (5) if filed by a contractor under a contract or contracts for an agreed sum, an identification of the contract and a general statement of the kind and character of the labor or materials furnished;
- (6) in all other cases than that set forth in clause (5) of this section, a detailed statement of the kind and character of the labor or materials furnished, or both, and the prices charged for each thereof;
- (7) the amount or sum claimed to be due; and
- (8) such description of the improvement and of the property claimed to be subject to the lien as may be reasonably necessary to identify them.

49 P.S. § 1503(1)-(8).

The Plaintiff has the burden of proving a valid lien. *W. T. Bradley Co. v. Gaghan*, 57 A. 985 (Pa. 1904); *Intercoastal Lumber Distributors v. Derian*, 178 A. 350, 353 (Pa. Super. 1935). Pennsylvania courts have repeatedly emphasized that a contractor or subcontractor must strictly comply with the statute's requirements to effectuate a valid claim on the lien. *Wyatt Inc. v. Citizens Bank of Pennsylvania*, 976 A.2d 557, 564 (Pa. Super. 2009); *Schell v. Murphy*, 153 A.3d 379, 381 (Pa. Super. 2016). The right to the lien does not arise from the act of furnishing labor or materials, but rather for the actual debt incurred for these acts. *Murray v. Zemon*, 167 A.2d 253, 255 (Pa. 1960). The statute provides that "every improvement and the estate or title of the owner in the property shall be subject to a lien...for the payment of all debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or report of the improvement..." 49 P.S. § 1301.

Under §1502(a)(1), "To perfect a lien, every claimant must file a claim...within six (6) months after the completion of his work." 49 P.S. § 1502(a)(1). "An aggrieved subcontractor must serve preliminary notice prior to "completion of the work" and then finish the job so they can perfect the lien." *Philadelphia Const. Servs., LLC v. Domb*, 903 A.2d 1262, 1268 (Pa Super. 2006) "Completion of the work' is defined as "performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs." 49 P.S. § 1201(8). However, one exception exists "where, through no fault of the claimant, [if] the improvement is not completed, the right to lien shall nevertheless exist." 49 P.S. § 1305. Where no excuse is raised by the claimant as to nonperformance, it is proper to strike the claim. *Bohem v. Seabury*, 21 A. 674, 674 (Pa. 1891). In *Phila. Const. Servs., LLC v. Domb*, the §1305 no-fault exception did not apply where Claimant "walk[ed] off the job prior to 'completion of the work' because he [thought] there [was] a breach of contract." committed by Appellee. *Id.* at 1268.

In *Domb*, Claimant's Mechanics' Lien Claim averred that "Claimant has not completed the entire work for the project as the [Appellee] has breached its payment obligations to the Claimant." *Id.* at 1266. This "language of the Mechanics' Lien Law is clear and unambiguous and, as such, must be construed pursuant to common usage." *Phila. Const. Servs., LLC v. Domb*, 903 A.2d 1262, 1267 (Pa. Super. Ct. 2006). Moreover, "any questions of interpretation should be resolved in favor of a strict, narrow construction." *Id.* The court admitted "[a]t first glance, such a mandate may seem fundamentally unfair because it forces a [Claimant] to render full performance even when the other party already has breached the contract." *Id.* Nevertheless, "this result is equitable," because "[i]f a [Claimant] wishes to walk off the job prior to 'completion of the work' because he thinks there is a breach of contract, the [Claimant] is [still] afforded the remedy of pursuing a breach of contract claim." *Id.* Accordingly, the court found §1305's no-fault exception did not apply, and Claimant "failed to properly perfect the lien" under §1502(a)(1). *Id.*

Here, it is the burden of the Plaintiff to prove that it has a valid lien. The primary issue for this Court's resolution was whether Little Washington complied with the requirements of the Mechanics' Lien statute and perfected its lien. Specifically, whether the Plaintiff completed the work under its subcontract for purposes of filing the Lien within six (6) months under 49 P.S. § 1502(a)(1). The evidence, namely the testimony, exhibits, and pleadings show that Plaintiff did not. Plaintiff contends that it completed performance on the January 6, 2022 upon the delivery of its last shipment of the missing materials. Plaintiff Little Washington provided evidence of an email exchange with a representative of Defendants to prove it delivered the steel on January 6.<sup>5</sup> Plaintiff also provided invoices dated for each date it delivered the fabricated steel to Defendants.

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<sup>5</sup> The representative is Ed Cahan, who requested clarification as to whether Little Washington could schedule a delivery for 1/6/22. See Exhibit P-17, at page 1-2.

<sup>6</sup> However, an invoice dated for January 6, 2022, was not included among the invoices, with the invoices listed with a December 31, 2021 delivery date. Additionally, while the email exchange establishes that Defendants inquired about setting the delivery date for January 6, it does not prove that the delivery took place.

Little Washington has not produced evidence of the alleged delivery or of the alleged October 29, 2021 modification as to the removal of the erection of structural steel requirement from the contract. By Plaintiff's own admission, it stopped erection work on the National Metalcrafters Building site on October 22, 2021 and did not return to complete the work.<sup>7</sup> 49 P.S. § 1201(8) demands performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement. The Plaintiff only offers the claims in its pleadings and the oral testimony of its witness Douglas Howe to establish that delivery of the last materials was made forward, contending that such proof exists, but that it is not in the record. It did not furnish this proof for the Court's review. The evidence is insufficient, and as a result, the lien is unperfected, because delivery of the last materials was not made. The Mechanics' Lien statute requires strict compliance, without compliance there is no valid lien. Furthermore, even if Plaintiff provided proof of the delivery date, it would not preserve its Lien for purposes of the six-month filing deadline set forth in 1502(a)(1), as the delivery was to cure its failure to timely deliver the pieces under the terms of the contract.<sup>8</sup> Plaintiff cannot take shelter under the no-fault exception under §1305 either, because much like the Claimant in *Domb*, it did not fulfill its obligation to perform. As it was in *Domb*, the remedy here is in contract, not in a Mechanics' Lien.

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<sup>6</sup> See Exhibit P-2, at pages 2, 4, 6, and 8.

<sup>7</sup> See Exhibit D-2, at pg. 3

<sup>8</sup> See Exhibit D-5, at page 1-2; See *Neelu Enterprises, Inc v. Agarwal*, 276, 58 A.3d 828, 839 (Noting that "Work done to compensate defective performance of a contract for work and material in the construction of a building will not preserve [a] lien" as it pertains to the timelessness requirements of 49 P.S. § 1502(a)(1)).

**SO ORDERED.**

**DATED:**

**January 24, 2025**

**BY THE COURT:**

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**PAULA A. PATRICK, J.**