

No. 2006-52

AN ACT

HB 1637

Amending the act of August 24, 1963 (P.L.1175, No.497), entitled "An act to codify, amend, revise and consolidate the laws relating to mechanics' liens," further providing for definitions, for waiver of liens, for effect of waiver of liens, for rescission of contracts between contractors and subcontractors, for notices by subcontractors as condition precedent, for filing and notice of filing of claim and for priority of liens.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 201 and 401 of the act of August 24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, are amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Improvement" includes any building, structure or other improvement of whatsoever kind or character erected or constructed on land, together with the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended.

(2) "Property" means the improvement, the land covered thereby and the lot or curtilage appurtenant thereto belonging to the same legal or equitable owner reasonably needed for the general purposes thereof and forming a part of a single business or residential plant.

(3) "Owner" means an owner in fee, a tenant for life or years or one having any other estate in or title to property.

(4) "Contractor" means one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the owner, express or implied, in addition to the preparation of drawings, specifications and contract documents also superintends or supervises any such erection, construction, alteration or repair.

(5) "Subcontractor" means one who, by contract with the contractor, *or pursuant to a contract with a subcontractor in direct privity of a contract with a contractor*, express or implied, erects, constructs, alters or repairs an improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the

foregoing, whether as superintendent, builder or materialman. The term does not include an architect or engineer who contracts with a contractor or subcontractor, or a person who contracts with a **[subcontractor or with a] materialman or a person who contracts with a subcontractor not in direct privity of a contract with a contractor.**

(6) "Claimant" means a contractor or subcontractor who has filed or may file a claim under this act for a lien against property.

(7) "Materials" means building materials and supplies of all kinds, and also includes fixtures, machinery and equipment reasonably necessary to and incorporated into the improvement.

(8) "Completion of the work" means 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.

(9) "Labor" includes the furnishing of skill or superintendence.

(10) "Erection and construction" means 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.

(11) "Alteration and repair" means any alteration or repair of an existing improvement which does not constitute erection or construction as defined herein.

(12) "Erection, construction, alteration or repair" includes:

(a) Demolition, removal of improvements, excavation, grading, filling, paving and landscaping, when such work is incidental to the erection, construction, alteration or repair;

(b) Initial fitting up and equipping of the improvement with fixtures, machinery and equipment suitable to the purposes for which the erection, construction, alteration or repair was intended; and

(c) Furnishing, excavating for, laying, relaying, stringing and restringing rails, ties, pipes, poles and wires, whether on the property improved or upon other property, in order to supply services to the improvement.

(13) "Prothonotary" means the prothonotary of the court or courts of common pleas of the county or counties in which the improvement is situate.

(14) "Residential building" means property on which there is a residential building, or which is zoned or otherwise approved for residential development, planned development or agricultural use, or for which a residential subdivision plan or planned residential development plan has received preliminary, tentative or final approval pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code."

[Section 401. Waiver of Lien by Claimant.—A contractor or subcontractor may waive his right to file a claim by a written instrument signed by him or by any conduct which operates equitably to estop such contractor or subcontractor from filing a claim.]

Section 401. Waiver of Lien by Claimant.—

(a) Residential Buildings.

(1) *A contractor may waive his right to file a claim against property for the erection, construction, alteration or repair of a residential building, in which the total contract price between the owner and the contractor is less than one million dollars (\$1,000,000), by a written instrument signed by him or by any conduct which operates equitably to estop such contractor from filing a claim.*

(2) (i) *A subcontractor may waive his right to file a claim against property for the erection, construction, alteration or repair of a residential building, in which the total contract price between the owner and the contractor is less than one million dollars (\$1,000,000), by a written instrument signed by him or by any conduct which operates equitably to estop him from filing a claim.*

(ii) *A subcontractor may waive his right to file a claim against the property, irrespective of the contract price between the owner and the contractor, of a residential building by a written instrument signed by him or by any conduct which operates equitably to estop him from filing a claim, provided the contractor has posted a bond guaranteeing payment for labor and materials provided by subcontractors.*

(b) Nonresidential Buildings.

(1) *Except as provided in subsection (a)(1), a waiver by a contractor of lien rights is against public policy, unlawful and void unless given in consideration for payment for the work, services, materials or equipment provided and only to the extent that such payment is actually received.*

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

Section 2. Section 402 of the act, amended October 8, 2004 (P.L.806, No.96), is amended to read:

Section 402. Waiver by Contractor; Effect on Subcontractor.—

(a) General rule.—[A] *Provided lien rights may be waived as set forth under section 401, a written contract between the owner and a contractor, or a separate written instrument signed by the contractor, which provides that no claim shall be filed by anyone, shall be binding: but the only admissible evidence thereof, as against a subcontractor, shall be proof of actual notice thereof to him before any labor or materials were furnished by him; or proof that such contract or separate written instrument was filed in the office of the prothonotary prior to the commencement of the work upon the ground or within ten (10) days after the execution of the principal contract or not less than ten (10) days prior to the contract with the claimant subcontractor, indexed in the name of the contractor as defendant and the owner as plaintiff*

and also in the name of the contractor as plaintiff and the owner as defendant. The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of any subcontractor, shall be a written agreement to that effect signed by all those who, under the contract, have an adverse interest to the subcontractor's allegation.

(b) **Electronic Indexing.** Notwithstanding the indexing requirements of subsection (a) in offices of the prothonotary in which such a written contract between the owner and contractor or separate written instrument is indexed electronically by means of a computer system or similar system such that the names of the contractor and owner are electronically retrievable regardless of whether the parties are designated as plaintiff or defendant, the contract or separate written instrument filed with the office of the prothonotary under subsection (a) may be indexed in the name of the contractor as defendant and the owner as plaintiff or in the name of the contractor as plaintiff and the owner as defendant.

Section 3. Sections 405, 501, 502 and 508 of the act are amended to read:

Section 405. **Right of Owner to Limit Claims to Unpaid Balance of Contract Price.**—Where **[there has been no waiver of liens and]** the claims of subcontractors exceed in the aggregate the unpaid balance of the contract price specified in the contract between the owner and the contractor, then if the subcontractor has actual notice of the total amount of said contract price and of its provisions for the time or times for payment thereof before any labor or materials were furnished by him, or if such contract or the pertinent provisions thereof were filed in the office of the prothonotary in the time and manner provided in section 402, each claim shall, upon application of the owner, be limited to its pro-rata share of the contract price remaining unpaid, or which should have remained unpaid, whichever is greatest in amount at the time notice of intention to file a claim was first given to the owner, such notice inuring to the benefit of all claimants.

Section 501. **[Notices] Formal Notice** by Subcontractor as Condition Precedent.—

[(a) Preliminary Notice in Case of Alteration and Repair. No claim by a subcontractor for alterations or repairs shall be valid unless, in addition to the formal notice required by subsection (b) of this section, he shall have given to the owner, on or before the date of completion of his work, a written preliminary notice of his intention to file a claim if the amount due or to become due is not paid. The notice need set forth only the name of the subcontractor, the contractor, a general description of the property against which the claim is to be filed, the amount then due or to become due, and a statement of intention to file a claim therefor.

(b) Formal Notice in All Cases by Subcontractor.]

(b.1) Time Period of Formal Notice. No claim by a subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have

given to the owner a formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506.

(c) Contents of Formal Notice. The formal notice shall state:

- (1) the name of the party claimant;
- (2) the name of the person with whom he contracted;
- (3) the amount claimed to be due;
- (4) the general nature and character of the labor or materials furnished;
- (5) the date of completion of the work for which his claim is made;
- (6) a brief description sufficient to identify the property claimed to be subject to the lien.]; and

(7) the date on which preliminary notice of intention to file a claim was given where such notice is required by subsection (a) of this section, and a copy thereof.

The notice may consist of a copy of the claim intended to be filed, together with a statement that the claimant intends to file the original or a counterpart thereof.]

(d) Service of Notice. The [notices] *notice* provided by this section may be served by first class, registered or certified mail on the owner or his agent or 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 a conspicuous public part of the improvement.

Section 502. Filing and Notice of Filing of Claim.—

(a) Perfection of Lien. To perfect a lien, every claimant must:

(1) file a claim with the prothonotary as provided by this act within **[four (4)] six (6)** months after the completion of his work; and

(2) serve written notice of such filing upon the owner within one (1) month after filing, giving the court, term and number and date of filing of the claim. 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.

(b) Venue; Property in More Than One County. Where the improvement is located in more than one county, the claim may be filed in any one or more of said counties, but shall be effective only as to the part of the property in the county in which it has been filed.

(c) Manner of Service. 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 a conspicuous public part of the improvement.

Section 508. Priority of Lien.—The lien of a claim filed under this act shall take effect and have priority *as follows*:

(a) **[In] Except as set forth in subsection (c), in** the case of the erection or construction of an improvement, as of the date of the visible

commencement upon the ground of the work of erecting or constructing the improvement[; and].

(b) **[In] Except as set forth in subsection (c), in the case of the alteration or repair of an improvement, as of the date of the filing of the claim.**

(c) Any lien obtained under this act by a contractor or subcontractor shall be subordinate to the following:

(1) A purchase money mortgage as defined in 42 Pa.C.S. § 8141(1) (relating to time from which liens have priority).

(2) An open-end mortgage as defined in 42 Pa.C.S. § 8143(f) (relating to open-end mortgages), the proceeds of which are used to pay all or part of the cost of completing erection, construction, alteration or repair of the mortgaged premises secured by the open-end mortgage.

Section 4. The amendment or addition of sections 201(14), 401 and 402 of the act shall apply to contracts entered into on or after the effective date of this section.

Section 5. This act shall take effect January 1, 2007.

APPROVED—The 29th day of June, A.D. 2006.

EDWARD G. RENDELL