

Digging In – The Basis of a Mechanic’s Lien Claim for Site Work

Mark F. Himsworth, Esq.

The Superior Court of Pennsylvania recently considered whether a site contractor stated a valid mechanic’s lien claim under Pennsylvania’s Mechanic’s Lien Law for ground and site work, even though construction of the industrial buildings planned for the property never occurred.

Specifically, in *B.N. Excavating, Inc. v. PBC Hollow-A, L.P.*, 71 A.3d 274 (Pa. Super. 2013), the site contractor asserted a mechanic’s lien claim based upon allegations that “labor and material provided had to do with installation of a silt fence, temporary riser, emergency spillway, topsoil stripping, cut and fill, concrete pipe, sub-grading for building pads, storm water bed, rock ribbing and other site work.” The trial court dismissed the mechanic’s lien claim since there were no buildings, and therefore no improvements to the property.

On appeal, however, the Court reversed, finding that a mechanic’s lien claim had indeed been stated. The Court looked to the statutory definition of “erection, construction, alteration or repair,” pursuant to 49 P.S. § 1201(12)(a) which included, among other things, excavation when it is “*incidental* to erection, construction, alteration or repair.” The Court found that the site work was indeed incidental to erection, construction, alteration or repair since it was “performed as an integral part of the planned construction process, even if construction never occurred.” The fact that the industrial buildings had not been constructed did not affect the validity of the mechanic’s lien claim since 49 P.S. § 1305 explicitly provides that even though an improvement is not completed, the right to lien shall nevertheless exist.

For more information, please contact Mark Himsworth at 215-661-0400 or MHimsworth@HRMML.com.