NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ZIMMERMAN SLATE ROOFING SPECIALISTS, LLC Appellee v. MICHELLE T. SEIDNER Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 418 EDA 2013

Appeal from the Order Entered on December 21, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No.: No. M0002 Nov. Term 2011

BEFORE: FORD ELLIOTT, P.J.E., WECHT, J., and MUSMANNO, J.

MEMORANDUM BY WECHT, J.: **FILED MARCH 31, 2014**

Michelle Seidner appeals the trial court's December 21, 2012 order denying Seidner's motion to strike a mechanics' lien filed by Zimmerman Slate Roofing Specialists, LLC ("Zimmerman"), in the Court of Common Pleas of Philadelphia County. We affirm.

The trial court set forth the factual and initial procedural background of this case as follows:

> On November 8, 2011, [Zimmerman] filed a mechanics' lien claim against [Seidner], with respect to monies owed for roofing services provided to [Seidner] at 515 Gates Street, in Philadelphia. Shortly thereafter, on November 29, 2011, attorney Neil Jokelson entered his appearance on behalf of Seidner. On December 8, 2011, [Zimmerman] filed a document titled "Certificate of Service." The Certificate filed by [Zimmerman] had above the caption "IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA CIVIL ACTION—LAW". It [was] signed by Christopher Mullen and states that [] Seidner was served with a copy of the Mechanics'

> lien claim on November 17, 2011, at the front desk of the "Phila DA's office." There is a handwritten note which states "*Spoke personally to Michele Seidner by phone . . . while she was in building. I explained what I had and asked her to come down to accept service but she refused & hung up. Left document with front desk security & asked him to forward to her. Security—50 yrs Blk Male 6'0" 200 Bald Glasses.*" On the second page, above the signature of Mr. Mullen is typed: "This service complied with Rule 1930.4 at Pa.R.C.P." . . . About ten months later, on October 25, 2012, Seidner's attorney filed a motion to strike the Mechanics' Lien. Seidner claimed that Zimmerman failed to comply with 49 P.S. § 1502(a)(2) because Seidner had not been served and the Certificate of Service was defective. On November 15, 2012, Zimmerman filed a pleading titled "amended affidavit of service." . . . This document identifies the court as Philadelphia County, states that Seidner was served on November 17, 2011 and has typed the same handwritten notes contained [on the December 8, 2011 certificate of service.] It is signed by Mr. Mullen, dated 11/1/12 and contains the sentence "I understand that false statements herein are made subject to 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities."

Trial Court Opinion ("T.C.O."), 4/29/2013, at 1-2 (footnote omitted; minor grammatical modifications; italics in original). On December 4, 2012, Zimmerman filed a response to Seidner's motion to strike the mechanics' lien. The trial court denied Seidner's motion by order dated December 20, 2012, and entered on the docket on December 21, 2012.

On January 22, 2013, Seidner filed a notice of appeal.[1] The trial court did not direct Seidner to file a concise statement of errors complained of on

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[1] The thirty-day time period to file an appeal expired on January 20, 2013, which was a Sunday. The following day, the 21st, was Martin Luther King Jr. Day. Seidner filed her notice of appeal on the next available day. Therefore, said filing was timely.

appeal pursuant to Pa.R.A.P. 1925(b), and Seidner did not file one. On April 29, 2013, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a).

Seidner presents the following two issues for our consideration:

> 1. Did the Court below err in refusing to strike the Mechanics' Lien Claim on [Seidner's] real estate where there was a failure by [Zimmerman] to perfect the lien when [Zimmerman] failed to comply or even substantially comply with the Mechanics' Lien Law at 49 P.S. § 1502(a)(2)?
> 2. Did the Court below err in refusing to strike the Mechanics' Lien Claim on [Seidner's] real estate where [Zimmerman] failed to effect proper and timely service upon [Seidner] pursuant to the requirements of the Mechanics' Lien Law at 49 P.S. § 1502(a)(2) and Pa.R.C.P. 402(a)(2)(iii)?

Brief for Seidner at 3 (statutory language omitted from question 1).

We review Seidner's motion to strike, which was predicated upon Zimmerman's alleged failure to perfect the notice and service requirements attendant to a perfected mechanics' lien, under the following standard of review:

> [We] will reverse the trial court's decision . . . only where there has been an error of law or abuse of discretion. When sustaining the trial court's ruling will result in the denial of a claim or a dismissal of suit, preliminary objections will be sustained only where the case is "free and clear of doubt."

Regency Inves., Inc. v. Inlander Ltd., 855 A.2d 75, 77 (Pa. Super. 2004) (quoting ***Clemleddy Constr. Inc. v. Yorston***, 810 A.2d 693, 696 (Pa. Super. 2002)).

Because Seidner's two stated claims implicate many of the same legal principles, and derive from the same statutory sections, we begin with an

overview of the basic principles governing challenges to a mechanics' lien. A mechanics' lien is an "extraordinary remedy" that "should only be afforded to [contractors or] subcontractors who judiciously adhere to the requirements of the Mechanics' Lien Law." ***Phila. Constr. Servs., LLC v. Domb***, 903 A.2d 1262, 1267 (Pa. 2006).

> The Mechanics' Lien statute provides an expeditious method to obtain a lien at very little cost to the claimant. Therefore, it is the claimant's principal responsibility to ensure timely service of the claim. If a Mechanics' Lien claim is not timely perfected, however, the claimant still has an adequate remedy in a suit for monetary damages arising out of a breach of contract. The advantage of a Mechanics' Lien is that the lien takes effect sooner and assumes priority over other liens. By contrast, a judgment lien takes effect and priority on the date of entry of judgment. **Thus, a claimant who desires a Mechanics' Lien must be vigilant in adhering to the service requirements of the statute.**

Regency Inves., 855 A.2d at 80 (emphasis added). The Mechanics' Lien Law sets forth the notice and service requirements that are essential to perfect a lien as follows:

> **§ 1502. 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) 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 appearance 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.
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> **(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.

49 P.S. § 1502.

It is well-settled that strict compliance with the notice and service requirements is essential to effectuate a valid claim. ***Castle Pre-Cast Superior Walls of Del., Inc. v. Strauss-Hammer***, 610 A.2d 503, 504 (Pa. Super. 1992); ***Denlinger, Inc. v. Agresta***, 714 A.2d 1048, 1052 (Pa. Super. 1998). "Service requirements under Pennsylvania's Mechanics' Lien law are strictly construed such that a complaint will be stricken if the statutory service requirements are not met[.]" ***Regency Inves.***, 855 A.2d at 77. We have recognized that the doctrine of substantial compliance may temper the strict construction of the Mechanics' Lien Law. ***Castle Pre-Cast***, 610 A.2d at 504. However, this doctrine only applies to the form of the notice, not the actual service requirements mandated by the statute with

which a claimant must comply strictly. ***Regency Inves.***, 855 A.2d at 77 (citing ***Tesaro v. Baird***, 335 A.2d 792, 796 (Pa. Super. 1975)).[2]

Against these authorities, Seidner mounts two challenges. First, Seidner argues that Zimmerman's "Certificate of Service" failed to comply with the Mechanics' Lien Law's requirement that an affidavit of service be filed within twenty days of serving the owner of the property with notice. Because Seidner challenges the form of Zimmerman's attempted compliance, we review Zimmerman's actions for substantial compliance. However, Seidner's second argument implicates Zimmerman's actual service of the notice of the lien, which we review for strict compliance.

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[2] Zimmerman argues that our recent *en banc* decision in ***Bricklayers of Western Penna. v. Scott Dev. Co.***, 41 A.3d 16 (Pa. Super.) (*en banc*), *appeal granted*, 58 A.3d 748 (Pa. 2012), requires that we construe compliance with all of the requirements of the Mechanics' Lien Law liberally. ***See*** Brief for Zimmerman at 3. In ***Bricklayers***, we held that, for purposes of interpreting who constitutes a "subcontractor," and therefore is entitled to pursue a mechanics' lien, the law should be construed liberally. ***Bricklayers***, 41 A.3d at 27. However, in doing so, we recognized the pre-existing dichotomy regarding how courts must evaluate compliance with the notice and service provisions of the act, and did not abrogate or otherwise alter that rubric. Rather we limited our holding to the interpretation of the term "subcontractor." ***Id.*** at 28 ("Although a strict compliance standard may be used to determine certain issues of notice and/or service, we conclude that a liberal construction of the definition of "subcontractor" is necessary to effectuate the Mechanics' Lien Law's remedial purpose of protecting pre-payment of labor and materials."). Thus, ***Bricklayers*** does not impact our analysis here. Although our Supreme Court has granted *allocatur* in ***Bricklayers***, the issues presented in that case differ substantially from those presented herein. Thus, the Supreme Court's grant of *allocatur* does not affect our review of this case.

In her first argument, Seidner contends that the "Certificate of Service" completed by Mullen, and filed by Zimmerman, was defective first because it was not an "affidavit of service," as contemplated by the section 1502(a)(2), and, second, because it did not contain a jurat or other statement attesting that the allegations therein were made under oath and subject to the penalties of perjury. In other words, Seidner contends that, because the "Certificate of Service" merely constituted an unsworn statement, it did not suffice as an "affidavit." Seidner maintains that we must review compliance in this context strictly. We disagree.

It is undeniable that Zimmerman's "Certificate of Service" is imperfect. First, the caption on the document inaccurately denotes the court in which Zimmerman filed his mechanics' lien. The document states "IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY." However, Zimmerman filed the lien in Philadelphia County. More importantly, Seidner is correct that the "Certificate of Service" does not include a jurat, or any other statement indicating that the statements contained in the document were made under oath or subject to the penalties of perjury. However, the "Certificate of Service" identifies the correct parties (including the correct home address for Seinder), lists the correct docket number, indicates the date that the notice was served upon Seidner, and contains a handwritten explanation of how Mullen effectuated service upon Seidner. ***See*** T.C.O., Exh. A. Additionally, Mullen later executed an "Amended Affidavit of Service," in which the problems identified by Seidner were corrected.

The question becomes first, whether the "Certificate of Service" substantially complied with the subsection 1502(a), and, if not, whether the "Amended Affidavit of Service" cured Zimmerman's non-compliance. For guidance, we turn to our decision in ***Castle Pre-Cast***. In that case, the appellant filed a mechanics' lien against the appellee after the appellee failed to pay for work that had been performed on appellee's property. The appellant filed with the trial court an affidavit attesting to the service of the notice of the lien on the appellee. In the affidavit, the deputy sheriff who had served the notice averred that he had served the notice on the appellee. However, attached to the affidavit was a document from the sheriff's department indicating that service had been made on the appellee's husband, not the appellee. The appellee filed preliminary objections to the lien, claiming that the affidavit, due to the factual discrepancy, was fatally defective. The trial court agreed with the appellee, and held that the appellant could not amend the affidavit. Consequently, the trial court granted the appellee's preliminary objections. 610 A.2d at 504.

In reversing the trial court, we applied the doctrine of substantial compliance to the form of the affidavit, and concluded that the trial court erred in a multitude of ways. We explained at length the trial court's errors as follows:

> [T]he trial court ruled that the service documents were defective, in that the Affidavit recited that the deputy sheriff accomplished service of the documents when he "personally served [them] upon [the appellee.]" In support of this ruling, the trial court cited the decision of the Court of Common Pleas of

Chester County in ***Hoffman Lumber Co. v. Geesey***, 35 Pa. D&C 2d 200 (1965). Of course, the trial court decision, from a different county, provided no binding precedent for the Delaware County Court in the instant case. Moreover, in ***J.H. Hommer Lumber Co., Inc. v. Dively***, 584 A.2d 985 (Pa. Super. 1990), our court rejected the narrowness of the interpretation of the Mechanics' Lien Law[that] had been rendered by the Chester County Court in the ***Hoffman Lumber Co.*** case. The trial court in the instant case should have been guided by our discussion and holding in the ***J.H. Hommer Lumber Co., Inc.*** case, because its facts were so analogous to those before us in the instant case. In the ***J.H. Hommer Lumber Co., Inc.*** case, the trial court sustained preliminary objections in a mechanics' lien action and dismissed the claim because of an alleged defect in the record as to service of a notice of the filing of a mechanics' lien. It held that a sheriff's return, which indicated service was made, was insufficient to comply with the affidavit requirements of 49 P.S. § 1502. In rejecting the trial court's ruling, and its reliance upon the reasoning of the trial court in the ***Hoffman Lumber Co. v. Geesey*** case, we noted that notice was the overriding concern, and held that a sheriff's return was adequate proof that the owner received the requisite notice under the Act. Further, our court held that a timely filed return of service by the sheriff, even if unsworn, constituted substantial compliance with the Act. Therefore, the sheriff's return which was appended to the Affidavit in this case, standing alone, satisfied the requirements to establish service had been properly accomplished, and the trial court's ruling to the contrary is rejected.

The trial court further erred, in two separate regards, in this case in finding that there was a difference between the averments of service in the sheriff's Affidavit and the attached return, and in holding that no amendment should be permitted to cure the alleged conflict between the two. A reasonable reading of the Affidavit permits one to conclude that the deputy sheriff averred that he, acting personally, served the [appellee] in accordance with the service requirements of the Rules of Civil Procedure. The same sentence of the Affidavit which includes the words "personally served upon [the appellee]," also notes that such service was evinced by a copy of the sheriff's return which was attached thereto and marked as an exhibit to the Affidavit. That return showed service was accomplished by handing the documents to the [appellee's] husband, an adult, at their

> residence. However, even if that reasonable construction of the language of the Affidavit did not occur to the trial court, it is clear that if an affidavit in an mechanics' lien action is timely filed, it may be amended as necessary to adhere to statutory requirements. ***Tesauro v. Baird***, 335 A.2d 792 (Pa. Super. 1975). The trial court's ruling that no amendment would be permitted in this case was clearly wrong.

Id. at 505-06 (citations modified).

Three material principles emerge from ***Castle Pre-Cast*** that bear heavily on the matter *sub judice*. First, we must apply the doctrine of substantial compliance to the form and manner of proofs of service for purposes of subsection 1502(a). Second, in mechanics' lien cases, "notice is the overriding concern." Third, if the affidavit does not conform perfectly to subsection 1502(a), the filing party may amend the affidavit as necessary to achieve the goals of the Mechanics' Lien Law.

Applying these three principles to the instant case, it is clear that Seidner is not entitled to relief. Although the "Certificate of Service" was not perfect, the document identified the proper parties, indicated the correct docket number, and detailed how service of the notice was completed. Thus, despite identifying the incorrect court and lacking a jurat, we conclude that the "Certificate of Service" substantially complied with subsection 1502(a). However, even if we were to conclude that the document was defective, the defects were cured by Zimmerman's "Amended Affidavit of Service," the filing of which ***Castle Pre-Cast*** makes clear was permissible. Consequently, the trial court did not err or abuse its discretion in rejecting Seidner's first claim.

In her second claim, Seidner contends that service upon the unidentified security guard that controlled entrance into the Philadelphia District Attorney's Office constituted improper service under the Mechanics' Lien Law. Although we review service of the notice for strict compliance with the Mechanics' Lien Law and the Pennsylvania Rules of Civil Procedure, we nonetheless disagree with Seidner.

The Mechanics' Lien Law states as follows with regard to how notice of a mechanics' lien must be served upon a defendant:

> **§ 1502. Filing and notice of filing of claim**
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> * * *
>
> **(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.

49 P.S. § 1502.

In ***Clemleddy***, we held as follows:

> [Subsection] 1502(c) requires service to "be made by an adult in the same manner as a writ of summons in assumpsit." 49 P.S. § 1502(c). The Pennsylvania Rules of Civil Procedure recognize claims asserted in assumpsit to be civil actions. ***See*** Pa.R.C.P. 1001 (stating that "[a]ll claims heretofore asserted in assumpsit or trespass shall be asserted in one form of action to be known as a 'civil action'"). Consequently, a writ of summons in assumpsit must be served in the same manner as service of process in a civil action.

Clemleddy, 810 A.2d at 696-97.

Moreover, "[t]he manner of service of a writ of summons in assumpsit is governed by Pa.R.C.P. 402." ***Castle Pre-Cast***, 610 A.2d at 505. Pursuant to Rule 402, a competent adult may serve notice of a mechanics' lien but must perfect service by any of the following methods:

> (a) Original process may be served
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> (1) by handing a copy to the defendant; or
>
> (2) by handing a copy
>
> (i) at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or
>
> (ii) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides; or
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> (iii) **at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof**.

Pa.R.C.P. 402 (emphasis added).

Service at an office or usual place of business is subject to limitations, and is only appropriate when the person to be served has "more proprietary responsibility and control over the business than that possessed by the average employee." ***Martin v. Gerner***, 481 A.2d 903, 908 (Pa. Super. 1984). However, a district attorney's office, like a public defender's office, differs from the traditional commercial place of business. We so held with regard to a public defender's office in ***Williams v. Office of Public***

Defender County of Lehigh, 586 A.2d 924 (Pa. Super. 1990). In ***Williams***, we held that service on multiple assistant public defenders was proper by serving the pertinent documentation to a secretary in that office. ***Id.*** at 926. We addressed the foundation of the rule, as well as the unique nature of a public defender's office, as follows:

> The purpose of [Rule 402(a)(2)(iii), formerly Rule 1109] is "to assure that the defendant will actually get knowledge of the commencement of the action against him and of his duty to defend. . . ." ***Cohen v. International Org'n Masters***, 371 A.2d 1337, 1339-40 (Pa. Super. 1977). . . . [W]e note that, in determining whether a defendant possesses sufficient proprietary interest or control over the place at which service was made, cases interpreting [Rule 402(a)(2)(iii)] consistently looked to the totality of the circumstances surrounding the defendant's contact with the place of service. ***See Martin v. Gerner***, 481 A.2d 903, 908 (Pa. Super. 1984); ***Cohen***, *supra* (citations omitted) (defendant Secretary-Treasurer of union did not possess sufficient control over operation of Pennsylvania branch of union for service upon union office to be effective as to him); ***see also Pincus v. Mut. Assur. Co.***, 321 A.2d 906 (Pa. 1974) (trustee of corporation possessed requisite proprietary interest for effective service at corporate office); ***Sharp v. Valley Forge Med. Center***, 221 A.2d 185 (Pa. 1966) (though defendant doctor had office at hospital where service attempted, he did not possess adequate interest as he worked in intern capacity and did not know of action until judgment entered against him); ***Branch v. Foort***, 152 A.2d 703 (Pa. 1959) (defendant maintenance employee did not possess sufficient proprietary or management interest in business for effective service); ***Slater v. Goldberg***, 402 A.2d 1073 (Pa. Super. 1979) (defendants had sufficient minimum contacts to allow effective service where corporate office wholly owned by them).
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> Here, the defendants whom appellant sought to serve (appellees) are all members of the Public Defender's Office of Lehigh County. The work product of that office is directly produced by its attorneys. Thus, unlike the defendants in ***Cohen***, ***Sharp***, and ***Branch***, who were held not to have sufficient proprietary interest and control over the business to

> have been effectively served, it appears that appellees here were regularly present at the office where service was made, and formed an integral part of its functioning and management. Furthermore, this case is distinguishable from those cases because of the unique nature of the office in question. Appellees possess a high degree of legal knowledge and sophistication; they are members of an office that handles legal documents such as notices of service on a regular basis. Finally, the record reveals that service was made upon the secretary of their office, and that defendants responded to appellant's complaint before judgment could be entered against them for failure to reply. Thus, there can be no question that they actually received notice of the action pending against them. In light of the totality of the circumstances, we conclude that service in this case was adequate.

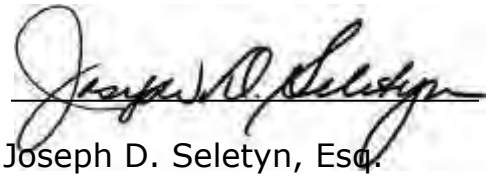
Id. at 925-26 (citations to certified record omitted).

We discern no material distinction between a public defender's office and a district attorney's office. Thus, the principles that we applied in ***Williams*** are equally applicable here. Seidner, working as an assistant district attorney, was called by Mullen and asked to come to the lobby area to be served. Undeniably with full knowledge of the substance of documentation that Mullen intended to serve upon her, Seidner refused to go to the lobby. Mullen was prevented from going directly to Seidner's office by the security guard. In light of ***Williams***, Mullen clearly was entitled to attempt service at Seidner's office. However, he was prevented from doing so by a person demonstrating clear control over the location: the security guard. Finally, based upon Seidner's refusal to come down and to be served, as well as the fact that she retained an attorney who entered his appearance at the correct docket number, it is clear that Seidner received

the notice and was aware of Zimmerman's mechanics' lien claim. Accordingly, as was highlighted in ***Williams***, the purpose of Rule 402(a)(2)(iii) was accomplished. Consequently, considering the totality of these circumstances, we conclude that service properly was effectuated upon Seidner. The trial court did not err or abuse its discretion in so holding.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/31/2014