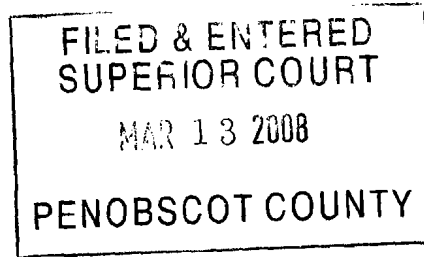


STATE OF MAINE
PENOBSCOT, SS.



District
SUPERIOR COURT
CIVIL ACTION
DOCKET NO BAN-07-RE-059
BAN-07-RE-036
BAN-07-RE-026
WBA PEN. 2008-002

ARC ONE, LLC,

Plaintiff,

v.

MORGAN HILL, LLC et al.,

Defendant.

DECISION

Hearing was held on these consolidated cases on March 13, 2008. Plaintiff Hammond Lumber was dismissed as a party on its own motion by the court and Granville Lumber indicated it was filing a stipulation of dismissal and neither appeared for hearing. Plaintiff Arc One appeared through counsel Kate E. Conley, Esq., Consolidated Electrical Distributors, Inc. appeared through counsel, Jennifer Archer, Esq., UPS Capital Business Credit appeared through counsel David Sherman, Esq. and all other defendants did not appear. Arc One proved its claim for \$26,153.36 against Morgan Hill LLC and Consolidated Electrical Distributors, Inc, proved its claim for \$10,543.55 plus attorney fees against Morgan Hill and personal Guarantor Jacqueline Tapley. Consolidated also established the priority of its lien over that of UPS. The only issue litigated pertained to whether Arc One filed its mechanics' lien in a timely manner.

According to 10 MRSA 3253, a mechanics' lien shall be dissolved unless the claimant files in the appropriate registry a true statement of the amount due the claimant within 90 days after he ceases to labor, furnish materials or perform services. In this case, Arc 1 had provided doors and similar materials to Morgan Hills' events center being built in Hermon, Maine and filed its certificate of lien on January 17, 2007.

Arc did not install the materials or perform any labor or services during the installation phase of the project. Its last invoice for materials that Morgan Hill purchased is dated 8/30/06, indicating a shipping date of 8/29. What causes Arc One to argue that the certificate is timely filed is its invoice 745 dated 3/1/07 indicating that it shipped something to Morgan Hill on December 20, 2006. In reality, Morgan Hill had complained of a leaking door supplied by Arc and Arc caused a subcontractor to travel to the events center on that date to attempt to repair the condition causing the leak. Nothing was shipped and this was a service called covered by a subcontractor. The plaintiff argues that its lien should not be dissolved because it filed the certificate within 90 days of the labor performed that is the subject of this invoice.

When the laborer's work is complete, and no lien is filed during the statutory period following completion, evidence of subsequent "trifling services" in connection with the work without the express or implied promise of payment is insufficient to extend the period of filing. Hahnel v. Warren, 123 Me. 422(1924), 123 A. 420. The court decides that this principle also implicitly applies to goods sold as well as labor provided. The court finds that the service performed on December 20, 2006 qualifies as "trifling" and dissolves Arc's mechanics' lien for a variety of reasons. First, prior to December 20, 2006, Arc had only provided goods and there is no indication that there was any agreement that Arc was also to provide services. Second, The amount of the invoice, \$186.00 is an extremely small percentage of the total amount of materials provided, \$24,977.36. Next, there is no record evidence indicating that the parties agreed that there would be a charge for the service call and an inspection for a defect could have been considered part of the purchase price. Finally, the fact that two months passed between the date of service and the invoice could indicate that the services were being billed to save the lien.

The court requests that one of the attorneys appearing at trial volunteer to provide the court with a proposed judgment with regard to these three consolidated cases, including a provision dissolving Arc's lien and a provision dismissing Granville Lumber's complaint if a stipulation of dismissal hasn't been filed by the time the judgment is completed.

The clerk is directed to incorporate this Decision into the docket by reference.

Dated: March 13, 2008



WILLIAM ANDERSON
JUSTICE, SUPERIOR COURT

03/25/2008

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ARC ONE LLC VS MORGAN HILL LLC ET ALS

UTN:AOCSSr -2007-0041379

CASE #:BANDC-RE-2007-00059

ARC ONE LLC ATTY SZWED, SUSAN	PL
MORGAN HILL LLC	DEF
MAIL ADDR:	
PIONEER CAPITAL CORPORATION	PII
UPS CAPITAL BUSINESS CREDIT ATTY SHERMAN, DAVID	PII
WELLS FARGO FOOTHILL CORPORATION	PII
HAMMOND LUMBER COMPANY ATTY UNDERKUFFLER, FRANK	PII
GRANVILLE LUMBER CORP ATTY KIMBALL, CURTIS	PII
CONSOLIDATED ELECTRICAL DISTRIBUTORS INC ATTY ARCHER, JENNIFER A.	PII

GRANVILLE LUMBER CORP VS. TAPLEY POOLS INC & MORGAN HILL LLC, ET ALS BANDC RE-2007-36
UPS CAPITAL BUSINESS CREDIT, PII BY DAVID SHERMAN, ESQ.
WELLS FARGO FOOTHILL, INC., PII BY: NO APPEARANCE ENTERED
HAMMOND LUMBER CO. PII BY: NO APPEARANCE ENTERED
ARC ONE LLC, PII BY KATE CONLEY ESQ
CONSOLIDATED ELECTRICAL DISTRIBUTORS INC., PII BY: JENNIFER ARCHER, ESQ.

HAMMOND LUMBER COMPANY VS. MORGAN HILL LLC & JACKIE TAPLEY ET ALS RE-2007-26
HAMMOND LUMBER COMPANY PLAINTIFF, DISMISSED BY: FRANK UNDERKUFFLER ESQ
MORGAN HILL LLC DEFENDANT BY: NO APPEARANCE ENTERED
JACKIE TAPLEY DEFENDANT BY: NO APPEARANCE ENTERED
UPS CAPITAL BUSINESS CREDIT, PII BY: DAVID SHERMAN ESQ
WELLS FARGO FOOTHILL, INC. PII BY NO APPEARANCE ENTERED
ARC ONE LLC PII BY KATE CONLEY, ESQ.
CONSOLIDATED ELECTRICAL DISTRIBUTORS INC., PII BY; JENNIFER ARCHER
GRANVILLE LUMBER CORPORATION, PII BY: CURTIS KIMBALL ESQ
PIONEER CAPITAL CORPORATION, PII BY: ALAN WOLF, ESQ