



Kesco, LLC v. 201 Salem Turnpike, LLC et al.

CV095012053

**SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF NEW
LONDON AT NEW LONDON**

2009 Conn. Super. LEXIS 2751

October 6, 2009, Decided

October 6, 2009, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

completed on or about April 30, 2009. This additional work was in the amount of \$ 485. The plaintiff thereafter sought to amend the originally filed mechanic's lien by serving a "Notice of Intent to File an Amended Mechanic's Lien" that was served on July 8, 2009, and recorded on the Norwich Land Records on or about July 17, 2009.

JUDGES: [*1] Emmet L. Cosgrove, J.

OPINION BY: Emmet L. Cosgrove

The February 2009 lien papers. The lien papers dated February 23, contain what is called a "Verification." It reads:

OPINION

**MEMORANDUM OF DECISION RE
DEFENDANT'S MOTION TO DISCHARGE
MECHANIC'S LIENS**

I, the undersigned, [*2] say, I am the lien claimant in the foregoing Notice of Claim of Lien, I have read the foregoing Notice of Claim of Lien, know the contents thereof and state that the same is true.

In this action, the plaintiff Kesco, LLC, seeks to foreclose mechanic liens on property owned by the defendant 201 Salem Turnpike, LLC. The defendant, 201 Salem Turnpike, LLC, on June 23, 2009, filed this motion to discharge the mechanic's liens which is presently before the court. The defendant asserts that the plaintiff failed to comply with the statutory requirements for perfecting a mechanic's lien as set out by *Connecticut General Statutes § 49-34 et seq.*

Underneath the Verification is a signature line containing the signature of Mr. Konecny. Further, immediately below the signature is the statement and seal of a notary public stating:

Subsequent to the filing of the application to discharge the first filed lien, the plaintiff asserted that further work was requested of it and that work was

On the 23rd day of February 2009, personally appeared before me Ladislav Konecny, member of Kesco, LLC, known to me to be the person whose name is subscribed to the above instrument, who

acknowledged and executed the above instrument.

The July 2009 Amended lien. On the July 15, 2009 lien papers there is the following verification language:

I, the undersigned, say I am a member of Kesco, LLC, the mechanic lien claimant in the foregoing Amended Notice of Mechanic's Lien, I have read the Foregoing Amended Notice of Mechanic's Lien, know the contents thereof and state that the same is true.

Mr. Konecny's signature is below the certification.

Immediately below the signature is the statement and seal of a notary public stating:

On the 15th day of July 2009, personally appeared before me Ladislav Konecny, member of Kesco, LLC, known to me [*3] to be the person whose name is subscribed to the above instrument, who acknowledged that he executed the above instrument as his free act and deed.

The question presented is whether the liens in question are defective because of their failure to be filed under oath.

Discussion

Connecticut General Statutes § 49-34 provides as follows:

A mechanic's lien is not valid unless the person performing the services or furnishing the materials (1) within ninety days after he has ceased to do so, lodges with the town clerk of the town in which the building, lot or plot of land is situated, a certificate in writing which shall be recorded by the town clerk with deeds of the land (A) describing the premises, the amount claimed as the lien thereon, the name or names of the persons against whom the lien is being filed and the date of commencement of the performance of

services or furnishing of materials, (B) stating that the amount claimed is justly due as nearly as the same can be ascertained, and (C) *subscribed and sworn to by the claimant*, and (2) not later than thirty days after lodging the certificate, serves a true and attested copy of the certificate upon the owner of the building, lot or plot [*4] of land in the same manner as provided for the service of the notice in § 49-35. (Italics added.)

Connecticut recognizes the remedial purpose of the mechanic's lien law and in accordance with that policy the courts have been liberal in validating liens where the mistakes in the lien documentation have been made in good faith and caused no prejudice to the owner or contractor. See *First Constitution Bank v. Harbor Village Partnership*, 230 Conn. 807, 646 A.2d 812 (1994). This concern for the mechanic is balanced with the recognition that mechanics liens are creatures of statute and the mechanic must comply with the statutory requirements.

In *Red Rooster Construction Company v. River Associates*, 224 Conn. 563, 620 A.2d 118 (1993), the claimant's president presented a certificate of mechanic's liens to a notary public to be notarized. He signed the certificate in the notary's presence and she then notarized the document. The notary's signature appeared under the following passage: "On this date before me . . . personally appeared and made oath that the facts stated herein are true . . . in witness whereof I set my hand and seal this day." The notary, however, did not administer an oral oath to the claimant's president. [*5] Further there was nothing in the statement of the claimant's president that stated that the facts in the lien documents were made under "his solemn oath." On this fact pattern the court held that the claimed lien was fatally defective.

The *Red Rooster* court discussed the meaning of the phrase "subscribed and sworn to by the claimant" as that phrase is used in § 49-34(1)(C) of the *General Statutes*. "Although the term "ceremony" is not defined by statute, it is clear that some formality is essential. To make a valid oath, there must be, in some form, an unequivocal and present act by which the affiant consciously takes upon him or herself the obligation of an oath . . . Stated otherwise, in order to have a valid statement under oath, the attention of the person to be sworn must be called to

the fact that his or her statement is not a mere asseveration, but must be sworn to, and he or she must do some corporeal act in recognition of this." 58 Am.Jur.2d 1056, Oath and Affirmation 18 (1989)." *Red Rooster* at 579.

In this case there is even less of a colorable compliance with the statutory requirements than there was in *Red Rooster*. While the claimant states "he knows the contents thereof and [*6] states that the same is true" there is no indication that he is aware that the statement must be made with the solemnity of an oath. There is no indication in the Notary Public statements that an oath was administered as there was in the *Red Rooster* case. The notarizations in this case amount to an acknowledgment, not an oath. In the first lien the notary states that Mr. Konecny "acknowledged and executed the above instrument." In the amended lien the notary states that the signer, Mr. Konechy "acknowledged that he executed the above instrument as his free act." "An oath . . . is a solemn and formal declaration that the contents of

a declaration, written or oral, are true, and it must be in accordance with the ceremony and procedures set forth in *General Statutes* § 1-22."

As noted in *Red Rooster*, held "to validate a mechanic's lien certificate without any evidence that the claimant performed some act or form of ceremony indicating that the claimant consciously undertook the obligation of an oath would invite confusion, delay and uncertainty into an area where certainty and complete compliance with the statutory requirements are of paramount importance to interested parties and the general [*7] public." (Internal citations omitted.) *Red Rooster, supra*, at 579.

The motion to discharge the February 23, 2009 Notice of Claim of Lien and the July 15, 2009 Amended Notice of Mechanic's lien is granted.

Cosgrove, J.