FAYETTEVILLE CONTRACTORS, INC., v. PARKLAWNS, INC., C.P. Franklin County Branch, No. D.S. B. 1986-470

Mechanics Lien Claim - Oral Contract - Paving - Improvement - Summary Judgment

1. A mechanics lien cannot be allowed for work on land alone where no building or permanent structure is erected.

2. In order for paving work on parking lots around new townhouses to be the subject of a mechanics lien, it must be incidental to the erection, construction, alteration or repair of a building.

3. The fact that a paving contractor did not construct townhouses on defendant's land does not mean its work is not incidental to construction of townhouses.

Jay H. Gingrich, Esq., Attorney for Plaintiff/Claimant
Jan G. Sulcove, Esq., Attorney for Defendant/Owner

KAYE, J., October 8, 1987:

A. PROCEDURAL HISTORY OF THE CASE

On November 12, 1986, plaintiff, Fayetteville Contractors, Inc. ("Fayetteville"), filed a Notice of Mechanics' Lien Claim in the Franklin County Prothonotary's Office in which it asserted a claim against defendant, Parklawns, Inc. ("Parklawns"). The lien which was lodged was in the amount of six thousand two hundred ninety-three dollars ($6293.00) arising out of work and materials done and furnished pursuant to an oral contract entered into between Fayetteville and Parklawns on July 22, 1986. According to the mechanics' lien claim, the base construction and paving work performed by Fayetteville was done in connection with the construction of townhouses on Parklawns' property in Greene Township, Franklin County, Pennsylvania. The work for which the lien was filed took place between August 18, 1986, and August 22, 1986.

On January 8, 1987, this Court entered an order permitting Parklawns to pay into court a sum of money sufficient to cover the balance claimed and costs, thereby discharging the lien upon the premises. Pursuant to a Rule issued under Pa. R.C.P. No. 1659, Fayetteville, on January 28, 1987, filed its Complaint to obtain judgment on the claim. An Answer Containing New Matter was filed by Parklawns on February 19, 1987.

On March 10, 1987, Fayetteville filed its Reply to New Matter and also filed a Praecipe for Arbitration in connection with this case on the same date. An arbitration hearing was set for July 9, 1987. On July 2, 1987, Parklawns filed a Motion for Summary Judgment pursuant to Pa. R.C.P. No. 1035. In its Motion, Parklawns asserts that the work performed by Fayetteville, for which the mechanics' lien claim was filed, was not connected to, and was not an integral part of, a contract for the erection, construction, alteration or repair of any building or permanent structure and that therefore, a mechanics' lien claim cannot be filed in this matter.

As a result of Parklawns' motion for summary judgment, the arbitration hearing was cancelled, and oral argument before the Court was scheduled for September 3, 1987. That argument having been held, and briefs having been submitted by the parties, the matter is now before the Court for disposition.

B. STATEMENT OF MATERIAL FACTS

1. On or about July 22, 1986, plaintiff, Fayetteville Contractors, Inc. ("Fayetteville") entered into a verbal agreement for the paving of a parking area adjacent to townhouses on premises owned by defendant, Parklawns, Inc. ("Parklawns").

2. This paving was performed on Lots 41 through 46 of Scot-Greene Estates Phase III - Section II Subdivision.

3. The specific work which was to be done by Fayetteville was the grading, laying a stone base, and paving of the parking lots surrounding the townhouses on the above-mentioned lots.

4. The first work and materials were furnished and supplied by plaintiff on August 22, 1986.

5. On August 22, 1986, plaintiff withdrew its employees from the premises of the defendant without completing the aforementioned paving on that date or thereafter.

6. As a consequence of this action on the part of the plaintiff, defendant was required to engage another contractor to complete the paving of the parking area. This work was completed on September 11, 1986.

7. The oral contract price between the parties was six thousand two hundred dollars ($6,200).

8. On October 31, 1986, plaintiff sent defendant a bill for work

performed at the Scot-Greene Estates site in the amount of six thousand two hundred ninety-three dollars ($6,293.00).

9. The ninety-three dollars ($93.00) is a service charge due on all accounts past due over thirty (30) days.

10. On November 12, 1986, plaintiff filed a mechanics' lien in the office of the Prothonotary of Franklin County in the amount of six thousand two hundred ninety-three dollars ($6,293.00) against Lots 41 through 46 of Scot-Greene Estates Phase III - Section II Subdivision.

11. On the same day as filing, defendant received notice of the filing of the mechanics' lien.

C. DISCUSSION

The right to a mechanics' lien is conferred by Section 301 of the Mechanics' Lien Law of 1963, 49 P.S. Section 1301, which reads as follows:

> Every improvement and the estate or title of the owner in the property shall be subject to a lien, to be perfected as herein provided, for the payments of all debts due by the owner to the contractor or by the contractor to any of his sub-contractors for labor or materials furnished *in the erection or construction, or the alteration or repair of the improvement, . . .* [Emphasis added].

The term "erection, construction, alteration or repair" is defined in Section 201 (12) of the Law, 49 P.S. Section 1201, as follows:

> *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; . .* [Emphasis added].

The term "improvement" is defined in Section 201 (1) of the Law, 49 P.S. Section 1201 which follows:

> 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 equiping the same for the purpose for which it is intended. (Emphasis added).

Unquestionably, the above definitions describe work and materials of the type embraced in the instant claim. Whether or not they are lienable items must depend upon whether they were "furnished in the erection or construction" of an "improvement"

as defined by Section 201 (1), *supra.*

> Operations eligible for mechanics' lien fall into two classes: (1) Primary operations, erection, construction, alteration or repair of a building, structure, or improvement of the kind which is erected or constructed on land; and (2) Secondary operations, including demolition, removal of improvements, excavation, grading, filling, paving, and landscaping, when such operation is "incidental" to a primary operation, that is, to the erection, construction, alteration or repair of an improvement.
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> *NORTHWOOD NURSERIES v. TIMBER HILL*
> 66 D&C 2d 314, 317
> (C.P. Monroe Co., 1974).

An activity, although found within the list of secondary activities, cannot be considered for a mechanics' lien" . . .unless it can be linked, by a connection of some sort, with a recognized primary (activity) . . ." *NORTHWOOD NURSERIES, supra,* at 317. The Court in *NORTHWOOD NURSERIES* went on to say that the use of the expression "incidental to . . ." in Section 201 (12) of the Mechanics' Lien Law, 49 P.S. Section 1201, followed by the words "erection, construction, alteration, or repair", rather than by the word "improvement", strongly suggests that the intention of the legislature was to require a connection of a structural nature. *NORTHWOOD NURSERIES, supra.*

In *SCHWARTZ & BAKER v. RACING, INCORPORATED,* 25 Monroe 125 (1967), a mechanics' lien was filed against Pocono International Raceway for labor and materials furnished for the excavation, grading and installation of a drain pipe. Interpreting the 1963 Mechanics' Lien Law, the Court of Common Pleas of Monroe County struck the lien because of the absence of any *structural* connection between the grading of a racetrack and installation of drain pipe and any building, construction or alteration.

> "A race track, per se, is not a 'building' . . . [f]urthermore, there is nothing in the record to demonstrate that the work and materials embraced in the instant claim bear a structural relationship to any 'building' . . .".

The decision was consistent with decisions construing earlier legislation: *HAMM v. LOCKAMY, 34 D & C 2d 462 (C.P. Adams Co., LEGISLATION: HAMM v. LOCKAMY,* 34 D & C 2d 462 (C.P. Adams Co., 1964); and *PARKHILL v. HENDRICKS,* 53 Pa. Super. 9 (1913), where the court affirmed the denial of a lien for

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT OF
FRANKLIN COUNTY, PENNSYLVANIA
ORPHAN'S COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphan's Court Division for CONFIRMATION: February 4, 1988.

FORBES: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Esther R. Forbes, late of Greene Township, Franklin County, Pennsylvania, deceased.

HENNEBERGER: First and final account, statement of proposed distribution and notice to the creditors of James Ellsworth Henneberger, Executor of the Estate of Kathryn E. Henneberger, late of Waynesboro, Franklin County, Pennsylvania, deceased.

STEIGER: First and final account, statement of proposed distribution and notice to the creditors of Thomas B. Steiger, Jr., Executor of the Estate of Esther Steiger, late of the Borough of Mercersburg, Franklin County, Pennsylvania, deceased.

TROUPE: First and final account of Citizens National Bank and Trust Company of Waynesboro, Pennsylvania, Trustee for benefit of Janet Inez Troupe who died June 8, 1986, and for unstated remaindermen. This is a marital trust established under the Last Will and Testament of Hubert F. Troupe, deceased. The Trustee requests that distribution be determined by the Court or an auditor of a Maryland will.

WEAGLY: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Kathryn W. Weagly, late of Waynesboro, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk, Orphans' Court
1/8, 1/15, 1/22, 1/29/88

NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 19th day of June, 1987, for the purpose of obtaining a certificate of incorporation. The name of the corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364 as amended, is RAYCO ELECTRONICS U.S.A., INC., 10923 Kipe Drive, Waynesboro, PA 17268.

The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

John W. Frey
Patterson, Kaminski, Keller & Kiersz
239 East Main Street
Waynesboro, PA 17268

1/15/88

grading and sodding a yard surrounding a suburban house, then in the course of construction. A contrary view may be found in *SWEIGART v. RICE-STEVENS CORPORATION,* 38 D & C 2d 528 (C.P. Delaware Co., 1965), where the court sustained a lien under the Mechanics' Lien Law of 1963 for grading and paving a parking area adjacent to a restaurant in the course of construction. The reasons given was that the parking lot was "an essential and integral part of the construction of the restaurant itself." *SWEIGART, supra,* at 531.

The view expressed in *SCHWARTZ & BAKER, supra,* has been supported in *SAMPSON-MILLER ASSOCIATED COMPANIES, INC. v. LANDMARK REALTY COMPANY,* 224 Pa. Super. 25, 26 303 A.2d 43, 43 (1973). In this instance, a mechanics' lien was filed for the following: "clearing, grubbing, excavating and grading of the land; installation of storm sewers . . .paving and curbing . . .", no building or other permanent structures were built on the parcels of land on which this work was performed. The Superior Court upheld the lower court's decision that a mechanics' lien cannot be allowed for work on land alone where no building or permanent structure is erected.

> Here, however, we are faced with additional statutory material which governs such preliminary work and precludes the interpretation sought by appellant. "Erection and construction" means ". . . the erection and construction of a new improvement or of a substantial addition to an existing improvement . . .". The definitional sections go on to include within the scope of "erection, construction, alteration or repair", the following: "demolition, removal of improvements, excavation, grading, filling, paving and landscaping, *when such work is incidental to the erection, construction, alteration or repair."* [Emphasis added]. The aforementioned section was intended to declare "existing decisional law with respect to such work upon the ground . . .which is incidental to the erection, construction, alteration or repair of an improvement, *as compared to such work when it is performed independently of any erection, construction, alteration or repair of an improvement, in which latter case no lien is allowed".* [Emphasis added]. Comment-Joint State Government Commission, 1964 Report.
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> *SAMPSON-MILLER ASSOCIATED COMPANIES, INC. v. LANDMARK REALTY COMPANY,* 224 Pa. Super. 25, 30, 303 A.2d 43, 45 (1973).

In *MORRISSEY CONSTRUCTION COMPANY, INC. v. CROSS REALTY COMPANY,* 42 D & C 2d 533, 544 (1967), the Montgomery County Court of Common Pleas held that a mechanics'

lien claim by a construction company against one of a number of lots and buildings in a housing development was valid since the work performed by the construction company (paving and sewer work), was incidental to the construction or erection of a structure within the meaning of the Mechanics' Lien Law of 24, 1963, P.L. 1175.

In the present case, the defendant, Parklawns, the owner of a development of townhouses, Scot-Greene Estates, made a separate contract with the plaintiff, Fayetteville, for paving the parking area surrounding the townhouses. It is the work performed under this contract by Fayetteville for Parklawns from which the mechanics' lien arises. Mr. Glenn E. Deardorff, President of Fayetteville Contractors, Inc., has, in his deposition, stated that all of the work incidental to the paving of the parking area, including the paving itself, was to be performed by Fayetteville. "We were supposed to grade the parking lot, install a stone base and then blacktop". (Deardorff deposition at p. 4). Fayetteville alleges that the materials used and the paving work performed bear a relationship to the buildings being erected. "The paving work performed by Claimant was done in connection with the construction of the townhouses on Owner's real estate". (Notice of Mechanics' Lien Claim, paragraph #5).

Fayetteville, in its Brief of Plaintiff/Claimant in Opposition to Motion for Summary Judgment, has stated that the testimony given by Mr. Deardorff at page 4, line 16, supports their contention that the work performed by Fayetteville, was, in fact, done in connection with the construction of the townhouses. Plaintiff failed to cite to the testimony referred to in its brief. However, upon an examination of Mr. Deardorff's testimony at page 4 of the deposition, this Court has read the following:

Q. (Schollaert): Would you tell me exactly what you were to do on this job?

A. (Deardorff): Install parking lot at new townhouses [sic] that was being constructed.

Defendant, Parklawns, in its Brief of Defendant/Owner in Support of the Motion for Summary Judgment, has submitted evidence in an attempt to show that there is no genuine issue of material fact. That evidence is also testimony from Mr. Deardorff:

Q. (Schollaert): Did you do any other work on the property other than paving work?

Wenger, the place of beginning.

CONTAINING 1.040 acres, more or less, and being in accordance with survey and draft made May 22, 1969, by John Howard McClellan, C.S., and recorded in Franklin County Deed Book Volume 642, Page 837.

BEING the same real estate which David H. Luber and Ethel Roberta Luber, his wife, by deed dated November 5, 1976, and recorded in Franklin County, Pennsylvania, in Deed Book Volume 734, Page 358, conveyed to Clyde H. Swisher, Jr. and Patricia O. Swisher, his wife.

SUBJECT to such rights for mountain road shown on said draft.

AND together with the right of Clyde H. Swisher, Jr. and Patricia O. Swisher, his wife, their heirs and assigns, to use said mountain road in common with all other users of same.

IMPROVED with a one-story frame cabin containing four rooms, no bath and several additional outbuildings, a well, septic and electric, and having a street address of 11506 Skyline Drive, Orrstown, Pennsylvania.

BEING sold as the property of Clyde H. Swisher, Jr. and Patricia O. Swisher. Writ Number AD 1985-71.

SALE NO. 5
Writ No. AD 1987-262 Civil 1988
Judg. No. AD 1987-262 Civil 1988
The Citizens National Bank of Greencastle
—vs—
John D. Hostetter
Atty: J. Dennis Guyer

ALL THAT CERTAIN lot or parcel of land, with the building and improvements thereon, in Antrim Township, Franklin County, Pennsylvania, bounded and described as follows:

BEGINNING at an existing iron pin at the southeast corner of the tract hereby conveyed at the westerly edge of the public road known as U.S. Route 11 and at lands now or formerly of Herbert M. Swope Estate; thence by lands now or formerly of Herbert M. Swope Estate North eighty-six (86) degrees twenty-five (25) minutes forty (40) seconds West three hundred seventy-two and forty-nine hundredths (372.49) feet to a point which lies fifty-five and twenty-nine hundredths (55.29) feet from a point on the last described line which is ninety-four hundredths (.94) of a foot from an existing post; thence along the easterly right-of-way line of the public road known as Interstate Route 81 by a curve to the left with length of two hundred twenty-one and nine hundredths (221.09) feet, radius of two thousand nine hundred fifty-four and ninety-three hundredths (2954.93) feet, tangent of one hundred ten and sixty hundredths (110.60) feet to a point; thence by the remaining lands now or formerly of Dennis C. Regester and passing through a set pin on line which is forty-six and seventy-one hundredths (46.71) feet from the last mentioned point South eighty-six (86) degrees twenty-five (25) minutes forty (40) seconds East three hundred fifty-four and fifty-two hundredths (354.52) feet to a set iron pin at the westerly edge of the public road known as U.S. Route 11, which lies four hundred forty-eight (448) feet from an existing iron pin and post; thence by the westerly edge of the latter public road South five (5) degrees East two hundred twenty-three (223) feet to the existing iron pin, the place of beginning, containing one and eight hundred thirty-three thousandths (1.833) acres as is shown on draft of survey made by William A. Brindle, Registered Surveyor, on November 11, 1974, which together with the necessary municipal approvals is attached to the herein after recited deed.

The above described real estate is the same real estate which Dennis C. Regester and Barbara J. Regester, his wife, by their deed dated December 22, 1977, and recorded in the Recorder's Office of Franklin County, Pennsylvania, in Deed Book Volume 753, Page 49, conveyed to John D. Hostetter.

BEING sold as the property of John D. Hostetter, Writ No. AD 1987-262.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, February 22, 1988 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on February 29, 1988 at 1:00 P.M., prevailing time in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA
1/8, 1/15, 1/22

A. (Deardorff): On that property?

Q. (Schollaert): On this property, right, that you filed a mechanics' lien claim for?

A. (Deardorff): No.

Q. (Schollaert): You had no part in constructing any buildings that were on this property?

A. (Deardorff): No, unless you figure that ditch back behind. I had seperate contract on that, but that had nothing to do with this.

Q. (Schollaert): That would be for putting a ditch in?

A. (Deardorff): It went past the property line.

(Deardorff deposition at page 20).

A motion for summary judgment may be granted only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as matter of law. *MARISCOTTI v. TINARI,* 335 Pa. Super. 599, 601 485 A.2d 56, 57 (1984); *THORSEN v. IRON AND GLASS BANK,* 328 Pa. Super. 135, 140, 476 A.2d 928, 930 (1984); *RICHLAND CORPORATION v. KASCO CONSTRUCTION COMPANY,* 337 Pa. Super 204, 210, 486 A.2d 978, 981 (1984); *ASTRO MANUFACTORING COMPANY v. NORTHWEST SAVINGS* (No. 2), 72 D&C 2d 217, 223 (C.P. Warren Co., 1974); *McFADDEN v. AMERICAN OIL COMPANY,* 215 Pa. Super. 44, 48, 257 A.2d 283, 286 (1969); *TOTH v. PHILADELPHIA,* 213 Pa. Super. 282, 285, 247 A.2d 629, 631 (1968); *see also* Pa. R.C.P. No. 1035.

The party who moves for summary judgment has the burden of showing that there is no genuine issue as to any material fact and must submit affidavits or other evidence in support of the motion. *BILLMAN v. ASSIGNED CLAIMS PLAN,* 349 Pa. Super. 448, 453, 503 A.2d 932, 935 (1986); *GENESIS LEASING COMPANY, INC. v. MINCHOFF,* 315 Pa. Super. 437, 444, 462 A.2d 274, 277 (1983). Summary disposition of a case is permitted only in the clearest of cases. *HANKIN v. MINTZ,* 276 Pa. Super. 538, 540, 419 A.2d 588, 589 (1980); *KOTWASINSKI v. RASNER,* 436 Pa. 32, 258 A.2d 865 (1969).

> . . . we are to accept as true all well pleaded facts in the non-moving parties' pleadings, as well as the admissions on file, *giving to them the benefit of all reasonable inferences to be drawn therefrom;* the record must be examined in the light most favorable to them; and in passing upon a motion for summary judgment, it is no part of our function to decide issues of fact but solely to determine whether there is an issue of fact to be tried and all doubts as to the existence of a genuine issue as to a material fact must be resolved against the

party moving for a summary judgment [Emphasis added].

RITMANICH v. JONNEL ENTERPRISES, INC.
219 Pa. Super. 198, 203, 280
A. 2d 570, 573 (1971).

In passing upon a motion for summary judgment, a court must examine the record in the light most favorable to the non-moving party and resolve all doubt against the moving party. *MARISCOTTI,* 355 Pa. Super. at 601, 485 A.2d at 57; *THORSEN,* 328 Pa. Super. at 141, 476 A.2d at 930-931; *RICHLAND MALL,* 337 Pa. Super. at 210, 486 A.2d at 981; *SCHACTER v. ALBERT,* 212 Pa. Super. 58, 62, 239 A.2d 841, 843 (1986).

> *The Court must consider both the record actually presented and the record potentially possible* at the time of trial . . . A hearing on a motion for summary judgment is not a trial on the merits and the Court on such motion should not attempt to resolve conflicting contentions of fact . . . [Emphasis added].
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> *ASTRO MANUFACTURING COMPANY v. NORTHWEST SAVINGS* (No. 2), 72 D&C 2d 217, 223 (C.P. Warren Co. 1975); *SCHACTER v. ALBERT,* 212 Pa. Super. at 60-62 239 A.2d at 843.

Parklawns, in proffering their testimony from Mr. Deardorff's deposition, has shown that, other than paving the parking area and digging a ditch, Fayetteville, indeed, did not do any other work at the site of the Scot-Greene townhouses. However, Section 201 (12) of the Law 49 P.S. Section 1201 states that, ". . . construction . . . includes . . . paving . . . when (that) work is *incidental* to the . . . construction . . ." [Emphasis added]. Parklawns has not shown that the paving was *not* performed incidental to the construction of the townhouses.

In an action for summary judgment, we are required to give the non-moving party the benefit of all reasonalbe inferences that are to be drawn from the record. This record is to be examined in a light *most favorable* to the non-moving party and resolve all doubt against the moving party. Fayetteville has failed to demonstrate how the paving work performed by it was done in connection with the construction of the townhouses. However, the evidence, in the form of deposition testimony presented by Parklawns, has not resolved all doubts which this Court has concerning whether or not the paving work was or was not incidental to the townhouse construction. This issue is one of material fact. The possibility

exists that the work in question was, in fact, incidental to the construction. As such, defendant has not shown that it is clearly entitled to relief in the form of summary judgment.

We must deny its motion for summary judgment.

ORDER OF COURT

NOW, October 8, 1987, defendant's motion for summary judgment is denied.

Exceptions are granted to the defendant.

BETHLEHEM STEEL CORPORATION v. PENN CENTRAL CORPORATION, C.P.
Franklin County Branch, No. A.D. 1985 - 310

Railroads - Determinable Base Fee - Abandonment

1. Where a railroad holds a determinable base fee over which its tracts previously existed, upon abandonment of the property, the land reverts to the owner of the fee.

2. Mere non-use of a right of way does not constitute an abandonment.

3. Total cessation of use for railroad purposes does constitute abandonment.

4. Where a railroad gives notice of intent to abandon under the Regional Rail Reorganization Act and sells a portion of its right of way are evidence of an intent to abandon.

J. McDowell Sharpe, Esquire, *Counsel for the Plaintiff*
James H. Stewart, Jr., Esquire, *Counsel for the Defendant*

KELLER, P.J., August 27, 1987:

On December 6, 1985, plaintiff, Bethlehem Steel Corporation, filed a complaint in action to quiet title. The land at issue is a 14.12 acre strip which is 60 feet wide and runs for a distance of 1.82 miles. The strip of land runs across and is abutted on both sides by eight contiguous tracts of land owned in fee simple by the plaintiff corporation. The land in question is located in Peters Township, Franklin County, Pennsylvania.

On January 10, 1986, defendant, Penn Central Corporation,