

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

HVAC DISTRIBUTORS, INC.,	:	November Term 2010
Plaintiff,	:	
v.	:	No. 3426
CARLISLE STREET PARTNERS, LP,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 11022382

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of May 2011, upon consideration of Defendant Carlisle Street Partners, LP's Preliminary Objections to Plaintiff's Complaint to Enforce Mechanic's Lien Claim and Plaintiff's response in opposition, it hereby is **ORDERED** that the Preliminary Objections are **Sustained**, the complaint is dismissed and the lien is discharged.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**

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**OPINION**

This is an action by Plaintiff HVAC Distributors, Inc. (hereinafter “Plaintiff”) to enforce a mechanic’s lien claim against Carlisle Street Partners, L.P. (hereinafter “Defendant”).

Plaintiff is a distributor and manufacturers’ representative of residential and light commercial heating and air conditioning equipment and accessories. Defendant is the owner of property known as the The Modules of Temple Town located at 1417-1425 North 15<sup>th</sup> Street, Philadelphia, Pa.

Plaintiff alleges that it supplied materials and supplies in connection with the heating, ventilation and air conditioning at the Project. Defendant allegedly failed to fully pay for the material supplied. A balance remains of \$60,301.64. On September 17, 2010, plaintiff filed a Mechanic’s Lien Claim against defendant’s interest in the Project and Property for the sum of \$60,301.64 in Philadelphia County. On October 1, 2010, plaintiff filed an affidavit of service as required by section 1502 of the Mechanics’ Lien Law. The affadavit of service states that HVAC’s Mechanics’ Lien claim was served by Joseph Valentine of Talone & Associates, Inc. upon a female adult occupant at the address of 510 Oakley Road, Haverford, Delaware County, Pa. 19041 on September 29, 2010. Talone & Associates is a process server.

On November 23, 2010, plaintiff filed a complaint to enforce mechanic's lien claim. Defendant filed the instant preliminary objections seeking to dismiss the complaint and discharge the lien for failure to comply with § 1502(c) of the Mechanics' Lien Law.

### **DISCUSSION**

This case involves the interpretation and application of the Mechanics' Lien Law 49 P.S. § 1502. Section 1502 provides in relevant part as follows:

#### 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 six (6) months after 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 of the 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.

Section (c) requires service of the notice of filing of a mechanics' lien claim be made in accordance with the Pennsylvania Rules of Civil Procedure, specifically by an adult in the same manner as a writ of summons in assumpsit. Claims asserted in assumpsit are civil actions and must be served in accordance with Pa. R. Civ. P. 400.<sup>1</sup> Pa. R. Civ. P. 400 provides that original process shall be served within the Commonwealth only by the sheriff. Pa. R. Civ. P. 400.1 provides:

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<sup>1</sup> See, Clemleddy Const. v. Yorston, 810 A.2d 693, 696 (Pa. Super. 2002).

(a) in an action commenced in the First Judicial District, original process may be served

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(2) in any other county by deputized service as provided by Rule 400 (d) or by a competent adult forwarding the process to the sheriff of the county where service may be made.

In the case *sub judice*, plaintiff did not serve defendant with notice of the lien claim by the Delaware County Sheriff. Rather Talone, a private process server, served the lien claim on defendant in Delaware County. Such service is improper under the Mechanics' Lien law and the Pennsylvania Rules of Civil Procedure.

Plaintiff urges the court to apply the doctrine of substantial compliance. The doctrine of Substantial Compliance does not apply where there is a defect in the actual service of notice.<sup>2</sup> Service requirements under the Pennsylvania's Mechanics' Lien law are strictly construed.<sup>3</sup> The language regarding manner of service is mandatory. Consequently, since plaintiff failed to serve the notice of lien claim upon the defendant by sheriff, defendant's preliminary objections are sustained.

### CONCLUSION

For the foregoing reasons, defendant's preliminary objections are sustained, the complaint is dismissed and the lien is discharged.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**

Dated: May 19, 2011

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<sup>2</sup> Regency Invst. v. Inlander Ltd, 855 A.2d 75 (Pa. Super. 2004).

<sup>3</sup> *See* Clemleddy Const. v. Yorston, 810 A.2d 693, 696 (Pa. Super. 2002).