

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 31942

STEVEN W. RICHARDS,
CORTLAND PROPERTIES, INC.
NORTHPOINT RESIDENTIAL CONSTRUCTION, INC., and,
MID-LAKE PROPERTIES, II, INC.,

Appellants,

v.

Civil Action No. 03-P-14
Circuit Court of Tucker County
Andrew N. Frye, Jr. Judge

ROBERT JUNE HARMAN
dba Harman Equipment Sales,

Appellee.

FROM THE CIRCUIT COURT OF
TUCKER COUNTY, WEST VIRGINIA

**APPEAL BRIEF OF THE APPELLEE,
ROBERT JUNE HARMAN**

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November 27, 2004

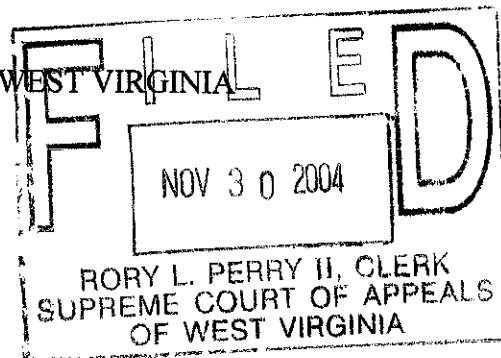


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**ROBERT JUNE HARMAN'S BRIEF IN RESPONSE TO
APPEAL OF STEVEN W. RICHARDS,
CORTLAND PROPERTIES, INC. NORTHPOINT
RESIDENTIAL CONSTRUCTION, INC. and
MID-LAKE PROPERTIES, II, INC.**

Robert June Harman respectfully requests that the Honorable Justices of the Supreme Court of Appeals of West Virginia reject the Appeal of the Appellants herein. The ruling of the Circuit Court of Tucker County was correct and the Mechanic's Lien filed by the Appellee, Robert June Harman, d.b.a. Harman Equipment Sales, is a valid mechanic's lien upon the property owned by the Appellants. The Appellants should not be rewarded for their failure to pay the Appellee for the work that was performed in the subdivision.

I. STATEMENT OF THE KIND OF PROCEEDING AND NATURE OF THE RULINGS OF THE CIRCUIT COURT OF TUCKER COUNTY

The Appellants filed an unverified Petition to Discharge Mechanic's Lien that was filed on the 22nd day of October 2003 by the Appellee, Robert June Harman. The Appellants sought a ruling that the Mechanic's Lien is invalid and asked the Circuit Court of Tucker County to make such a finding. The matter was set for an evidentiary hearing by the Appellants on January 26, 2004, at which time the Court heard testimony from Robert June Harman and the Appellant, Steven W. Richards, concerning the mechanic's lien and the work performed.

Following the January 26, 2004 hearing, Judge Andrew N. Frye, Jr. entered an Order making findings of fact reflecting that Robert June Harman did perform work for the Appellants to improve 10 lots of real estate in the Northpoint Subdivision, as well as others; that the Appellants had failed to pay him for all of the work; that based upon the work performed, the Appellee has a valid mechanic's lien under the provisions of West Virginia Code §38-2-*et seq*;

that the Appellee did perfect his lien by filing it within the statutorily prescribed perfection period; and, that the Appellee's Mechanic's Lien does cover all of the work performed by the Appellee inasmuch as the work performed was all of the same or similar type and was based upon an ongoing contractual relationship between the parties. All of these findings of fact cannot be disputed by the Appellants as they were made based upon the testimony of the Appellant, Steven W. Richards, and the Appellee, Robert June Harman.

The Circuit Court of Tucker County refused the Petition to Discharge Mechanic's Lien. It is from that Order, the Appellants seek this Court's involvement in this matter.

II. STANDARD OF REVIEW

The Appellants did outline a standard of review for this Court's consideration in evaluating their Appeal Brief. The Appellants argue that "[a]s the issue on appeal is a question of law and an interpretation and application of the mechanic's lien statute, the Court must apply a *de novo* standard of review." The Appellants's argument is misplaced.

This Court's opinion in Chrystal R. M. v. Charlie A. L., cited by the Appellants, is not applicable to this situation, as the Court was faced with actually interpreting the language of a purported adoption agreement and the statutes regarding paternity versus those statutes regarding adoptions. We do not have that situation in this case. There is no statute to interpret as the mechanic's lien statutes are very clear and the trial court's findings of fact should be reviewed using the *clearly erroneous* standard and the trial court's conclusions of law should be reviewed applying the *de novo* standard.

The Appellee contends that the standard of review asserted by the Appellants is incorrect because the trial court judge, Andrew N. Frye, Jr., was sitting as a fact finder at the time that

testimony was taken and findings of fact had to be determined. See Rule 52(a) of the West Virginia Rules of Civil Procedure. The findings of fact were made by Judge Frye based upon the testimony of the Appellant, Steven W. Richards, and the Appellee, Robert June Harman. A clear reading of Judge Frye's Final Order indicates that he is making findings of fact in support of his ruling. Those findings of fact should not be disturbed as this Court has held that:

[A] finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.

Syl. pt. 1, in part, In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996). See also Woo v. Putnam County Bd. of Educ., 202 W. Va. 409, 412, 504 S.E.2d 644, 647 (1998), wherein this Court held that a "[r]eversal of a factual finding under the 'clearly erroneous' standard should not be done lightly." Applying the Court's standards outlined in the case of In re Tiffany Marie S., this Court must be left with the definite and firm conviction that a mistake has been committed and not based upon the feeling that the reviewing court would have decided the issue differently. This Court should not disturb Judge Frye's findings because they are plausible in light of the record reviewed in its entirety.

The Honorable Andrew N. Frye, Jr.'s findings of fact are not clearly erroneous and he was in the best position to determine the truth from the testimony that was offered at the evidentiary hearing held in this matter on the 26th day of January 2004. Judge Frye's ruling was the proper one and this Court should not disturb it.

Again, it should be noted that the Appellants have not taken issue with the Court's

conclusions of law, which held: that the purpose of the statute is to protect any person who increases the value of another's real property by furnishing labor or materials; that the Mechanic's Lien at issue in this case was sufficient as to the identification of the property owner; and, that the Mechanic's Lien was sufficient as to the structure inasmuch as the water system serviced all identified lots in the Mechanic's Lien.

III. STATEMENT OF FACTS

On October 22, 2003, the Appellee filed a Notice of Mechanic's Lien in the County Clerk's office for work that had been done on the property owned by the Appellants herein. The work was completed on August 17, 2003, thus the Mechanic's Lien was filed within 100 days of the completion of the work, in accordance with the mechanic's lien statute, West Virginia Code §38-2-1-et seq.

On December 19, 2003, the Appellants were dissatisfied that a Mechanic's Lien had been filed against their property and filed an unverified Petition to Discharge Mechanic's Lien against Robert June Harman seeking a ruling from the Circuit Court of Tucker County, West Virginia that would discharge the mechanic's lien filed by Robert June Harman and permit the Appellants to sell the lots which were subject to the Mechanic's Lien. These Appellants filed the action against Robert June Harman seeking redress from the Circuit Court of Tucker County.

On the 26th day of January 2004, the Circuit Court of Tucker County conducted a hearing on the Appellants's Petition to Discharge Mechanic's Lien. During the hearing on the Petition, the Appellants called two witnesses, Robert June Harman and Steven W. Richards. Robert June Harman testified that work was done on the water line by his company during the month of August 2003 and that the Mechanic's Lien was timely filed. (Tr. at page 3). Mr. Harman also

testified that he had been doing work for the Appellants for many, many years. (Tr. at page 2). Mr. Harman testified that a leak in the waterline needed to be found and fixed, which was done, and that he had not been paid for the work that was done. (Tr. at page 4 and page 8).

Counsel for the Appellants attempted to show through Mr. Harman's testimony that the water line did not service the lots mentioned in the Mechanic's Lien, which Mr. Harman disputed. (Tr. at page 4). In fact, Mr. Harman testified that when a water leak occurs, they do not have any water in the Northpoint Subdivision. (Tr. at page 7).

The Appellant, Steven W. Richards, testified that he was one of the developers of Northpoint Subdivision and had been since 1983. (Tr. at page 8). He testified that Mr. Harman's company had repaired the water line and that he still owed Mr. Harman for the work that had been done on it. (Tr. at page 10 and page 11). Mr. Richards also attempted to convince Judge Frye that the waterline that was repaired had no relation to lots upon which the Mechanic's Lien is placed. (Tr. at page 10). However, Mr. Richards admitted later on during the direct examination by his lawyer that repair work had been done on the waterlines installed in 1996 from a "freeze-up in the road *in this same place* a couple of times, yes, sir." (Tr. at page 11). (Emphasis added).

On cross-examination, Mr. Richards was asked "you don't deny that you owe my client in excess of \$220,000.00, do you?" The Appellant, Steven Richards's, response was "[n]o, sir." (Tr. at page 12). The Appellant, Steven W. Richards, acknowledged that the amount owed is in excess of Two Hundred and Twenty Thousand Dollars (\$220,000.00) and that the amount of indebtedness is for work that Robert June Harman did in the subdivision and they were not able to pay him for the work that was done. (Tr. at page 12). Mr. Richards admitted that the work

was done by Robert June Harman, a licensed contractor, and that the work was done to a water supply line for the Northpoint Subdivision. (Tr. at page 13). Mr. Richards later admitted that the Northpoint Subdivision operates a water system licensed by the DEP or DNR, under one permit, and that permit covers the entire water system at the Northpoint Subdivision, including the line Mr. Harman had done work on in August of 2003. (Tr. at page 14). The water line in question is clearly a part of the entire water system operated at the Northpoint Subdivision and this Court should not disturb the findings of the trial court in this matter.

Later during the hearing, Judge Frye asked Mr. Jory, counsel for the Appellants, if a waterline is an improvement within the meaning of the Mechanic's Lien statutes. Mr. Jory correctly responded by saying that a waterline is a structure within the meaning of the Mechanic's Lien statutes. (Tr. at page 20). Following the hearing, Judge Andrew N. Frye, Jr., submitted his Order denying the petition to discharge the mechanic's lien and held that the mechanic's lien was a valid lien on the lots upon which it was placed.

The Appellants herein seek a reversal from this Court suggesting that Judge Frye's Final Order should not have been final, and argue: that there was a need for additional discovery; that additional discovery was needed to determine if a contract existed; that additional discovery was needed to determine if the Appellee's work was a continuation of the earlier work; and, that some of the notes are not collectable given the statute of limitations. Unfortunately, Judge Frye was not given the opportunity to respond to these arguments because they were never made to him prior to the hearing, at the hearing, or following the hearing. No relief from the Final Order was ever requested. Had Appellants felt strongly that Judge Frye's ruling was not based upon a complete record, the Appellants should have advised Judge Frye of that prior to his ruling or in

the form of a request for relief from the Final Order so that Judge Frye could have entertained those arguments. As these arguments were never made to the trial court, this Court should rule that those arguments have been waived by the Appellants and not permit them to be made at this time.

IV. DISCUSSION OF LAW

The Appellants sought a ruling from the Circuit Court of Tucker County and received one. The ruling discussed in the Final Order entered on the 30th day of January 2004 determined that the Appellee has a valid mechanic's lien. The ruling should not be disturbed by this Court as Judge Frye properly concluded that the mechanic's lien was filed within 100 days of completing the work in accordance with West Virginia Code §38-2-2; that West Virginia Code §38-2-16 provides that if one person performs the work, the work is deemed to be completed pursuant to one contract; that West Virginia Code §38-2-29 provides that if materials or labor are furnished to more than one piece of property, the lien attaches to all property upon which the materials or labor reaches; that West Virginia Code §38-2-27 provides that the Circuit Court is to determine the size of the property upon which to attach the lien if the property is in a rural area; and, that Carolina Lumber v. Cunningham 156 W.Va. 272, 192 S.E.2d 722 (1972) requires the statutes to be liberally construed in favor of the person asserting a mechanic's lien. Based upon the standard of review applicable to this matter, Judge Frye's order should not be disturbed by this appeal.

1. Trial Court's Ruling on Money Owed by the Appellants is Correct.

The Appellants's first assignment of error alleges that the Circuit Court erred in holding that a mechanic's lien may incorporate a monetary claim, which may not otherwise be enforced

due to the statute of limitations. The Appellant, Steven W. Richards, acknowledged during his testimony that he and the other Appellants owe the Appellee a sum in excess of Two Hundred and Twenty Thousand Dollars (\$220,000.00) for work that was done on the subdivision, by him, and for which he should be paid. Now, the Appellants are seeking a determination by this Court that Judge Frye's ruling that the money is owed and is a part of a valid mechanic's lien on the Appellants's property was wrong. However, it is clear that Judge Frye's findings on this issue were correct.

Judge Frye held in his Final Order that the work was done by the Appellee under a long standing contractual relationship between the parties and that the mechanic's lien was filed within the statutory time period. There was absolutely no evidence offered by the Appellants at the hearing on January 24, 2004 to dispute that the work was performed pursuant to a long standing contractual relationship between the Appellants and the Appellee. It was rather obvious during the hearing that the parties have operated under a long standing contractual relationship, which continued up until the Appellants's repeated failure to pay for the work that was done and the mechanic's lien was filed by the Appellee. Since that time, the Appellants have not sought the Appellee for any further contract work on their subdivision. However, the mechanic's lien was filed within the statutory time period and should be upheld.

The Appellants seek a review by this Court that the monies owed by the Appellants is not collectable given that the period of limitations has expired on the notes signed by the Appellants. However, that suggestion is simply not correct. The Appellee is owed for the work that was done and pursuant to the Mechanic's Lien statutes, this Court should uphold the trial court's ruling as the money is actually owed and the lien was perfected in a timely fashion.

According to the statute, West Virginia Code §38-2-16, “all materials furnished, all work done, and all services provided by any one person, firm or corporation, upon any one building or the improvements appurtenant thereto, or upon the real property whereon the same stands, or to which it may have been removed, shall be deemed and considered one contract, whether or not all of such material was bought at one time, or under one general agreement or otherwise, and whether or not all of such work, labor or services provided, was contracted for at one time or otherwise.” Clearly the trial court’s application of the statute was correct as Judge Frye rightly determined that all materials furnished, all work done and all services provided by any one person shall be deemed and considered as one contract, which is exactly what the statute says. The Appellants offer no analysis as to how the trial court’s ruling on this issue was incorrect. Fortunately, no such analysis can be offered by the Appellants because the trial court made the proper ruling.

In Carolina Lumber v. Cunningham, 156 W.Va. 272, 192 S.E.2d 722 (1972), this Court was faced with the question of determining the priorities of certain mechanics’s liens and deeds of trust that were attached to an apartment building. In that case, this Court held at Syllabus Pt. 2 that “[t]he purpose of the mechanic’s lien statute is to protect any person who increases the value of another person’s real property by furnishing labor or materials. These statutes are remedial, and, therefore, are to be liberally construed in order that they serve the purpose for which they have been enacted.” *Id.*

The Appellants do not dispute the purpose of the statute, which is to protect any person who increases the value of another person’s real property by furnishing labor or materials. The Appellee testified at the hearing that he provided labor, equipment and materials to the

Appellants, which increased the value of their real property. The mechanic's lien statute was created to protect the Appellee and others who provide labor or materials to another person, which increases the value of the real property upon which the work was performed.

Judge Frye's ruling clearly indicates that the Appellee should be paid for his work and that the labor and materials provided increased the value of the Appellants's property. The Appellants do not dispute that labor and materials were provided and that they increased the value of the Appellants's property. The Appellants do dispute that the totality of the mechanic's lien is valid because only one portion of the work, i.e. the locating and repairing the leaking water lines, was done within 100 days from the filing of the mechanic's lien and there was a separate invoice for such work. However, a clear reading of West Virginia Code §38-2-16 indicates that the Appellants's dispute is without merit.

West Virginia Code §38-2-16 cannot be any more clear. This statute states: "For the purposes of this article, all materials furnished, all work done, and all services provided by any one person, firm or corporation, upon any one building or the improvements appurtenant thereto, or upon the real property whereon the same stands, or to which it may have been removed, shall be deemed and considered one contract, whether or not all of such material was bought at one time, or under one general agreement or otherwise, and whether or not all of such work, labor or services provided, was contracted for at one time or otherwise." The legislature stated that "all materials furnished, all work done and all services provided by any one person...shall be deemed and considered one contract, whether or not all of such material was bought at one time, or under one general agreement or otherwise, and whether or not all of such work, labor or services provided, was contracted for at one time or otherwise." The legislature has clearly indicated that

it does not matter if there was more than one contract and it does not matter if all of the work, labor or services was contracted for at one time or not, the legislature has said that this situation is to be deemed “[f]or purposes of this article,…” as one contract. Had the legislature intended something different, it would have so stated. The Appellants cannot get around what the statute actually says, despite their best efforts to do so.

2. Appellants’ second assignment of error is misplaced because there does not have to be any continuity or identity in the work in order to have a valid lien.

The Appellants’ second assignment of error suggests that the Appellee’s lien cannot properly include the initial work done on the subdivision because there was no continuity or identity in the work and more than ten years has elapsed since the initial work was completed. However, the Appellants’ second assignment of error is just wrong.

Had there been separate and distinct contracts, as is asserted by the Appellants in their Appeal Brief, the Appellants could have so testified at the evidentiary hearing and presented that information to the trial court for its consideration. However, there was no such testimony as the Appellants were clearly aware of West Virginia Code §38-2-16 prior to the hearing, assuming that their counsel so advised them of the statute, and testimony concerning separate and distinct contracts was not necessary as the statute clearly states its to be considered one contract. Judge Frye reached the proper conclusion, especially in light of West Virginia Code §38-2-16 and this Court’s holding in Carolina Lumber v. Cunningham 156 W.Va. 272, 192 S.E.2d 722 (1972).

The Appellants’ reliance on 53 Am. Jur. 2d *Mechanic’s Liens* §254, 1 A.L.R. 3d 82, Nu Trend Elec. Inc. v. Deseret Federal Sav. and Loan Ass’n, Inc., 786 P.2d 1369 (Utah Ct. App. 1990), May v. Mode, 142 Mo. App. 656, 123 S.W. 523 (1909), and Fryman v. McGhee, 108 Ohio

App. 501, 163 N.E.2d 63 (1958) is simply misplaced. Those citations merely provide assistance to the Court in determining the priority of liens and discuss the relation back doctrine, as it applies to lien priority.

The Appellants want to use a red herring to get this Court to overturn a perfectly valid lien on the property owned by the Appellants. However, there is no question of the priority of liens in this instance. The Appellee has not asserted his lien is in priority to another liens of record in the County Clerk's Office in Tucker County, West Virginia. The Appellee merely asserts he is entitled to a lien on the Appellants's property for work that improved the Appellants's property and for which the Appellee was not paid. The Appellee has filed suit to perfect his lien, which is required by the statute, and thus the Appellee has met his obligations and the Appellant, Steven W. Richards, agreed that the Appellee had done all of the work that was alleged to have been done by the Appellee. (Tr. at page 15). The Appellee testified that he had been performing work in the subdivision for many, many years. (Tr. at page 2). Obviously, Judge Frye determined that there was an ongoing contractual relationship between the parties and so found based upon the testimony of Robert June Harman and upon West Virginia Code §32-2-16. There is just no evidence to the contrary and this Court cannot disturb that ruling unless it was clearly erroneous. *Rule 52(a) of the West Virginia Rules of Civil Procedure*. Just because this Court may have decided that issue differently is not sufficient to overturn the finding of the Circuit Court. In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996).

The suggestion that the "...Circuit Court's ruling could jeopardize the certainty and reliability of all title examinations performed for Northpoint Subdivision properties since 1988..." is simply a red-herring. The only lots that a lien has been placed against are those lots

that are still owned by the developers. The lots that have been sold prior to the filing of the Mechanic's Lien are not subject to the lien, as evidenced by the lots listed in the Mechanic's Lien filed by the Appellee on October 22, 2003. The Appellee could have filed a Mechanic's Lien on all of the lots in the subdivision, but he chose not to do so and the time period upon which to file such a lien has expired. Besides, purchasers of the lots have an obligation to make certain that all of the work performed by a contractor on a lot and in the common areas of the subdivision have been paid to avoid that situation. Thorn v. Barringer, 73 W.Va. 618 81 S.E. 846 (1914). As this Court stated in Thorn, subsequent purchasers must take notice of any mechanic's lien right that has attached prior to his purchase. Thorn at page 622. In order to avoid any confusion, all the Appellants have to do is to pay the Appellee for the work that was done and the lien will be released. The Appellee is not seeking anything but to be paid for his work. The Appellee is entitled to be paid and not cheated out of his labor and materials.

3. Appellee's lien attaches to the 10 lots in the subdivision as the work was done for water, sewer and roads, which benefitted each lot in the subdivision.

The Appellants' third assignment of error is that a mechanic's lien does not attach to property that was not improved by the work. This assignment of error should be rejected by this Court in accordance with West Virginia Code §38-2-29, which reads: "[a]ny materialman or furnisher of machinery or other equipment necessary to the performance of any one such general or subcontract...in quantities for use in more than one building or other structure or improvement appurtenant thereto, and any workman, laborer or other person who shall perform work or labor upon more than one such building or other structure or improvement appurtenant thereto, provided for in such contract, shall have a lien upon all of such buildings and other structures and

improvements into which his materials were put or upon which his work and labor was expended and upon the interest of the owner in and to the lot of ground upon which all of such buildings and of the owner in and to the lot of ground upon which they may be removed, and such line maybe perfected and preserved by one notice..." The main water line is part of the water system operated for the entire subdivision. In addition, the building of the roads and installation of utilities in the subdivision was done by the Appellee, Robert June Harman, in accordance with the ongoing contractual relationship. (Tr. at page 15). Furthermore, Mr. Richards admitted that the Northpoint Subdivision operates a water system licensed by the DEP or DNR, under one permit, and that permit covers the entire water system at the Northpoint Subdivision, including the line Mr. Harman had done work on in August of 2003. (Tr. at page 14). Every lot in Northpoint Subdivision is sold with the right to use the water system in place at the Northpoint Subdivision. Every lot is sold with utilities run to it, which were installed by the Appellee. (Tr. at page 15). Finally, the roads which were built to each lot were constructed by the Appellee and the lots were sold on the basis that there were roads by which to reach the lots. (Tr. at page 15). One cannot, in good faith, argue that a lien does not attach to those lots for work on the water system, the roads, and utilities which were all constructed for the benefit of those lots. Appellants suggest that the mechanic's lien is invalid because it covers lots that were not improved by the work, but that suggestion is without merit. Each lot in the subdivision was improved by the construction of roads, utilities and the water system because their value was increased and because it has made the lots more desirable to purchase.

In West Virginia, the erection, building, construction, alteration, removal or repairing of any building or other structure, and the furnishing of any part of the materials, machinery, or

other necessary supplies or equipment, and the performance of any labor or work necessary for the completion of any of the above named services as to any building, structure, etc. entitles the person furnishing such services, work or material, etc. to a mechanic's lien. West Virginia Code §38-2-1 and §38-2-2. Again, these statutes are to be liberally construed. Carolina Lumber v. Cunningham 156 W.Va. 272, 192 S.E.2d 722 (1972). When the property which is being improved is in a rural area, it is the obligation of the Circuit Court to determine how much land shall be subject to such lien. West Virginia Code §38-2-25. Obviously, Judge Frye determined that the ten lots owned by the Appellants was consistent with the amount of the lien and that work building the roads, the sewer system and the water system benefitted the 10 lots upon which the Appellee has placed his lien.

4. The Final Order should have been the "Final Order."

The Appellants' fourth assignment of error is that the Final Order entered by Judge Frye should not have been final based upon the limited information available. This Court should view that argument with extreme skepticism. Had the Circuit Court ruled that the lien was discharged, there would not have been any action to perfect a lien that the Circuit Court had discharged. Thus a ruling to discharge the lien would be a final appealable order. Because the Appellants did not prevail, they are arguing that the Final Order should not have been final. The Appellants do not get to have it both ways. They wanted a ruling to discharge the lien, they did not receive it because they were not entitled to it. Now, they want this Court to say that the ruling was premature or was in error because the Circuit Court did not entertain its new argument that there was insufficient information upon which to base a ruling, because it was not made to the Circuit Court. Fortunately, that is not the purpose of appeals. The purpose of appeals is to correct things

that the trial court did improperly. If the trial court was never afforded the opportunity to make a ruling on those arguments, because they were not made and are thus waived, this Court should reject the appeal.

If the Appellants had been successful in discharging the lien, the Appellants would not be arguing that the Circuit Court erred in discharging the lien because the Circuit Court had insufficient information to make its ruling. Because they do not like the ruling received, there is a contrived problem with the information upon which the Circuit Court based its ruling. This Court should not permit that abuse of the civil justice system. Obviously, the Appellants did not like the Circuit Court's ruling on the Petition to Discharge Mechanic's Lien and now want to raise issues as to why the Circuit Court's ruling was premature and was based upon an incomplete record, even though those arguments were not made to the Circuit Court below.

V. PRAYER FOR RELIEF

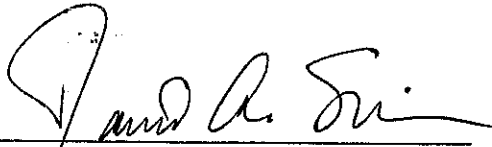
The Appellee prays that the Honorable Justices of the Supreme Court of Appeals for the State of West Virginia reject this Petition for Appeal. The Appellants sought a ruling from the Circuit Court of Tucker County to discharge the Mechanic's Lien, which was refused. The Circuit Court of Tucker County made the proper decision in this matter and it should not be disturbed by this Court on appeal, especially when the Appellants's brief is based upon arguments that were not ever made to the Circuit Court of Tucker County and could have been so made.

VI. REQUEST FOR ORAL ARGUMENT.

The Appellee respectfully requests that oral argument be presented in this matter.

ROBERT JUNE HARMAN
Appellee.

By counsel,

A handwritten signature in black ink, appearing to read "David A. Sims". The signature is written in a cursive style with a large initial "D".

DAVID A. SIMS
West Virginia Bar No. 5196
Counsel for Appellee


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CERTIFICATE OF SERVICE

I, David A. Sims, counsel of record for the Respondent, Robert June Harman, do hereby certify that I duly served a true copy of the attached "**ROBERT JUNE HARMAN'S, D.B.A. HARMAN EQUIPMENT SALES, APPEAL BRIEF**" by depositing a true copy of same in the United States Mail with sufficient postage attached thereto, addressed as follows:

Stephen G. Jory, Esquire
Jory & Smith, L.C.
Post Office Box 1909
Elkins, West Virginia 26241

Dated at Elkins, West Virginia, this 27th day of November 2004.



DAVID A. SIMS
West Virginia Bar No.: 5196
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