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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 99-10257-JMD

Chapter 7

ZLGH Development, Inc.,  
DebtorCitizens Bank of Massachusetts, Inc.,  
Plaintiff

v.

Adv. No. 00-1082-JMD

Michael S. Askenaizer, as Chapter 7 Trustee,  
PMJ Construction Co., Inc.,  
Joan E. Drepanos,  
Ralph A. Jolie, Renae E. Jolie,  
Kevin S. Sharp, and  
City of Dover, New Hampshire,  
Defendants

**MEMORANDUM OPINION AND ORDER**

**I. BACKGROUND**

Trial in this adversary proceeding commenced on February 12, 2001. Citizens Bank of Massachusetts, Inc. ("Citizens") and PMJ Construction Co., Inc. ("PMJ") agreed, after a short recess, that the Court could rule as a matter of law, based upon the record before it, on the issue of whether PMJ has a valid perfected mechanic's lien attachment under RSA 447:10. Specifically, PMJ requested that the Court find that based upon Exhibits 102 through 105, which were admitted into evidence without objection, PMJ has a valid perfected mechanic's lien attachment assuming, for this determination, that PMJ has a mechanic's lien which issue is to be litigated at trial. Having considered the arguments of counsel and having reviewed the exhibits, RSA 447:10, and the relevant case law, the Court finds for the reasons outlined below that PMJ has a valid perfected mechanic's lien attachment on the property described in Exhibit A of its Petition for Exparte Attachment (Exhibit 105) securing any valid mechanic's liens which PMJ may have against such property.

## II. DISCUSSION

RSA 447:10 provides:

Any such lien may be secured by attachment of the property upon which it exists at any time while the lien continues, the writ and return thereon distinctly expressing that purpose.

In interpreting the statute, the New Hampshire Supreme Court has stated that compliance with the statute requires the party asserting the mechanic's lien to (1) state in the writ the purpose for which the suit is brought; (2) describe the property on which he claims the lien with reasonable accuracy; and (3) direct the officer to attach it to preserve his lien. Ferns v. American Moore Peg Co., 81 N.H. 283, 283 (1924). See also Gothic Metal Lathing v. Fed'l Dep. Ins. Co., 135 N.H. 262, 263 (1992); Rodd v. Titus Constr. Co., 107 N.H. 264, 265-66 (1966); Mathers v. Connelly, 95 N.H. 107, 107 (1948).

Citizens contends that PMJ failed to satisfy the second and third elements. Specifically, Citizens contends that PMJ failed to describe the property with reasonable accuracy because the description was not contained within the four corners of the writ, see Ex. 104, but, rather, was contained as an exhibit to PMJ's petition for ex parte attachment to perfect its mechanic's lien, see Ex. 103. Citizens also contends that the description itself does not comply with the statute because it requires reference to another document, the recorded subdivision plan, in order to identify the property which is the subject of the attachment. In addition, Citizens argues that, because the description was not contained in the writ, the order to the sheriff to attach the property was also deficient. PMJ argues that the writ is sufficient since it contains a reference to Exhibit A, which specifically describes the property as follows:

Nineteen lots of land located at **Longhill Estates in Dover**, Stafford County, shown as **Lots Nos. 1, 2, 9, 10, 11, 15, 21, 22, 23, 25, 28, 29, 32, 35, 36, 37, 38, 39, 40** on a plan entitled "Subdivision of Land of Guido Haggemiller, Dover, NH, dated June 11, 1986["] and recorded in the Strafford County Registry of Deeds as Plan No. 31A-1.

Ex. 103 and 105. Both parties refer the Court to the cases of Holden Eng'r & Surveying, Inc. v. Law Offices of Raymond P. D'Amante, P.A., 142 N.H. 213 (1997), and Manchester Fed'l Sav. & Loan Ass'n v. Letendre, 103 N.H. 64 (1960), in support of their positions.

In Holden, the New Hampshire Supreme Court was faced with the issue of whether a return of

service in the writ of attachment was defective because it failed to state that the attachment was filed to perfect a mechanic's lien. Holden, 142 N.H. at 214. The plaintiff argued that the attachment was defective because the standard return of service form was not modified to state specifically that the attachment was made to secure a mechanic's lien. Id. at 215. The plaintiff wanted the court to interpret the phrase "the writ and return thereon distinctly expressing that purpose" contained in the statute as requiring the purpose to be explicitly stated twice, once in the writ and again in the return of service. Id. The Supreme Court declined to do so on the basis that it would require a "formalistic reading" of the statute. Id. Rather, the Supreme Court held that the phrase "writ and return" contained in the statute referred to the instrument as an integrated whole. Id. at 216. So long as the documents "together" distinctly expressed that the attachment was made to secure a mechanic's lien, the purpose of the attachment was sufficiently stated for purposes of the statute.

In Letendre, the issue before the Supreme Court was whether the command to the sheriff was sufficient where it was "stapled to the second page of the specifications." Letendre, 103 N.H. at 68. The Supreme Court held that "while in a technical sense we speak of a writ and a declaration, it cannot be said as a practical matter that the two are necessarily separate and distinct except as to content." Id. at 69. The Supreme Court further stated that "we believe the instrument here, including the writ proper, the declaration and the lien command, must be regarded as a whole and that RSA 447:10 so intended." Id. The Supreme Court noted that neither subsection 10 nor any other subsection of 447 provides an express direction as to the place where the command to attach and the statement of the purpose thereof should be inserted. Id. at 68.

Considering these cases together, the Court finds that RSA 447:10 does not expressly require that the property description be contained within the four corners of the "writ and return," only that the writ "distinctly" express the purpose of attaching a specific piece of property. In this case, it is undisputed that the Strafford County Registry of Deeds contains copies of (1) PMJ's petition for ex parte attachment to perfect its mechanic's lien, including Exhibit A containing a description of the property as outlined above;

(2) the writ of summons; and (3) PMJ's writ of attachment to secure mechanic's lien, all of which were recorded on May 4, 1998. See Ex. 105. Thus, anyone reviewing the records of the Strafford County Registry of Deeds would have notice that PMJ was asserting a mechanic's lien in Lots Nos. 1, 2, 9, 10, 11, 15, 21, 22, 23, 25, 28, 29, 32, 35, 36, 37, 38, 39, and 40 of the Longhill Subdivision in Dover, New Hampshire, which subdivision plan was a matter of record at the Registry of Deeds. See Letendre, 103 N.H. at 70 (holding that the parties could not prevail as bona fide purchasers as they had constructive notice of the mechanic's lien encumbrance). The purpose for virtually all recording instruments which affect interests in real estate is to protect those who have interests in land and to provide constructive notice of those interests to all purchasers and creditors. Amoskeag Bank v. Chagnon, 133 N.H. 11 (1990); see also RSA 477:3-a. Because the Court finds that the writ, and the documents referenced in it, distinctly state that PMJ was asserting a mechanic's lien in particular lots at the Longhill Subdivision in Dover, New Hampshire, PMJ has complied with the statute and, to the extent that PMJ has a mechanic's lien, it is secured by a valid perfected mechanic's lien attachment pursuant to RSA 447:10.

The description in Exhibit A refers to specific lots on a plan recorded in the Strafford County Registry of Deeds. RSA 447 and the New Hampshire Supreme Court cases interpreting the statute require that the property against which the mechanic's lien is claimed be described with reasonable accuracy. Citizens contends that this requirement must be satisfied within the writ itself and not by reference to other documents. There is nothing in RSA 447 or the decided cases which support this argument. The only requirement placed upon the description is "reasonable accuracy." It is likely that a description which makes reference to a recorded plan or even a street address may convey more accurate information than a metes and bounds description. The Court notes that many metes and bounds descriptions conclude with the words "meaning and intending to convey the property shown as lot \_\_\_" on a specific plan recorded in the registry of deeds.<sup>1</sup> No case or statute has been cited that would make the description in Exhibit A

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<sup>1</sup> While Citizens has argued that PMJ's reference to the subdivision plan is an insufficient description of property under RSA 447:10 and that reference to the property should have been by a metes and bound description, the Court notes that the New Hampshire Supreme Court declined to decide in White

inadequate for purposes of conveying, mortgaging or partially releasing a lien on any of the lots in question. A description of specific numbered lots on a subdivision plan recorded in the registry of deeds provides all holders of existing interests, purchasers, and creditors with adequate notice and has sufficient accuracy for purposes of RSA 447.

Since the Court has found that the description in Exhibit A is sufficient to describe the property to be attached with “reasonable accuracy” within the meaning of RSA 447, Citizens remaining argument on the adequacy of the direction to the sheriff is without merit.

### **III. ORDER**

For the reasons set forth in this opinion, PMJ has a valid perfected mechanic’s lien attachment on the property described in Exhibit A of its Petition for Exparte Attachment (Exhibit 105) to secure any valid mechanic’s liens which PMJ may have had against such property at the time its attachment was perfected. This opinion constitutes the Court’s findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. At the conclusion of the trial, the Court will enter a separate judgment on the amount, priority and extent of the mechanic’s liens held by PMJ.

DONE and ORDERED this 13<sup>th</sup> day of February, 2001, at Manchester, New Hampshire.

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J. Michael Deasy  
Bankruptcy Judge

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v. Francoeur, 138 N.H. 307, 310 (1994), whether, in a deed conveying real estate, a metes and bound description or a reference to a recorded subdivision plan should prevail when a discrepancy between the two exists.