

**IN THE COURT OF COMMON PLEAS OF  
NORTHAMPTON COUNTY, PENNSYLVANIA  
CIVIL ACTION**

**MICHAEL RADOGNA,  
Plaintiff**

**v.**

**JAMES WRIGHT and GLORIA  
WRIGHT, Husband and Wife,  
Defendants**

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**No. 1999-ML-4558**

**OPINION OF THE COURT**

This matter is before the Court on Petitioner Patricia G. Fritzinger’s “Petition to Strike Judgment/Open Judgment and/or Set Aside and/or Quash Judgment,” filed on July 31, 2014 (“Petition”). Petitioner is the owner of property located at 205 Tumble Creek Road, Easton, Northampton County, Pennsylvania (“the Property”). (Pet. ¶ 13, Ex. D.) On the date Petitioner filed her Petition, the Honorable Craig A. Dally issued a rule upon David Brookhart (“Respondent”) to show cause why the Petition should not be granted.<sup>1</sup> Respondent purports to be, through a series of alleged

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<sup>1</sup> Although Respondent filed a document entitled “Oppositions to Petition to strike/open judgment and/or set aside and/or quash judgement [sic]” on August 14, 2014,

assignments, the holder of a default judgment on a mechanics' lien claim filed at the instant docket number in favor of Plaintiff Michael Radogna ("Plaintiff") and against Defendants James Wright and Gloria Wright ("Defendants"), the former owners of the Property. (Pet. ¶ 3, Ex. C.) The mechanics' lien claim was filed by Plaintiff against Defendants on June 10, 1999.

On March 31, 2000, in an unrelated matter before this Court, judgment was entered in favor of Petitioner's late husband, Eugene Fritzing, and against Defendants at docket number C-48-CV-2000-2034.

On April 4, 2002, Plaintiff filed a Complaint to obtain judgment on the mechanics' lien. The Complaint was not served by the sheriff but, rather, was hand-delivered to Defendants by Plaintiff. On June 3, 2002, Plaintiff obtained a default judgment on the Complaint.

On June 7, 2002, the Property was sold at a sheriff's sale after Eugene Fritzing executed on the judgment he obtained in March 2000 in the unrelated case. (Pet. ¶¶ 5-7, 10, Ex. A.) Eugene Fritzing bought the Property at the sheriff's sale. (Pet. ¶ 10.)

On September 21, 2009, Eugene Fritzing conveyed the Property to himself and Petitioner, as husband and wife, by a deed recorded in the Northampton County Recorder of Deeds at Book 2009-1, page 243323.

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that filing does not respond to the factual allegations contained in the Petition. Thus, all averments of fact in the Petition are deemed admitted. See Pa.R.C.P. No. 206.7(a).

(Pet. ¶ 13, Ex. D.) Eugene Fritzinger died on November 6, 2010. (Pet. ¶ 14.)

On May 9, 2014, Plaintiff allegedly assigned the default judgment on the mechanics' lien claim to Respondent. On July 3, 2014, Petitioner discovered a document labeled "Notice" on the Property. (Pet. ¶ 15, Ex. E.) In the "Notice," Respondent claims that he intends to force a sale of the Property to satisfy the default judgment. (Pet. Ex. E.) However, no praecipe for writ of execution has been filed, and no writ of execution has been issued.

In response to the "Notice," Petitioner filed the instant Petition, in which she asks the Court for an Order striking and/or opening the judgment. On August 15, 2014, the Honorable Leonard N. Zito entered a stay of all proceedings and ordered depositions to be conducted in connection with the averments in the Petition. The deposition of Respondent was conducted on November 11, 2014, and was filed on March 30, 2015. The matter was subsequently placed on the Argument List of April 28, 2015, and was assigned to the undersigned for disposition, on brief. Petitioner filed a Brief on March 27, 2015. Respondent, acting *pro se*, filed a Brief on April 28, 2015. Respondent's Brief is not responsive in any way to the Petition, Petitioner's Brief, or any other aspect of this case.

Before addressing the merits of the Petition, the Court notes that while Petitioner is not a party to the case, Respondent has not raised any

objection to Petitioner's standing. Even if Respondent had not waived the issue, it is clear that "[a] judgment in rem in an action or proceeding upon a mechanics lien . . . shall be enforced against the real property subject to the lien." Pa.R.C.P. No. 3190. As the record owner of the Property, Petitioner certainly has standing to challenge the default judgment which Respondent has threatened to enforce against the Property.

With regard to a motion to strike a default judgment, "[a] court may only look at the facts of record at the time judgment was entered to decide if the record supports the judgment. A petition to strike does not involve the discretion of the court." *Erie Ins. Co.*, 839 A.2d at 386 (quoting *Triangle Printing Co. v. Image Quest*, 730 A.2d 998, 999 (Pa. Super. 1999)). "A petition to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. Matters outside of the record will not be considered, and if the record is self-sustaining, the judgment will not be stricken." *Cargitlada v. Binks Mfg. Co.*, 837 A.2d 547, 549-50 (Pa. Super. 2003) (citation omitted).

*Aquilino v. Philadelphia Catholic Archdiocese*, 884 A.2d 1269, 1280 (Pa. Super. 2005). In this case, a review of the record reveals multiple fatal defects that do not support the entry of the default judgment at issue, requiring it to be stricken. In this regard, the Court notes that "[t]he Mechanics' Lien Law . . . must be strictly complied with in establishing and enforcing the right to a lien" and, consequently, a judgment on that lien. See *Tully Drilling Co., Inc. v. Shenkin*, 597 A.2d 1230, 1231 (Pa. Super. 1991).

First, the Court notes that “[a]n action to obtain judgment upon a [mechanics’ lien] claim filed shall be commenced within two (2) years from the date of filing unless the time be extended in writing by the owner.” 49 P.S. § 1701(b). In this case, the mechanics’ lien claim was filed on July 10, 1999, and an amended claim was filed on October 27, 1999. Assuming for the sake of argument that the amended claim was valid, the Complaint to obtain judgment had to be commenced no later than October 27, 2001.<sup>2</sup> The Complaint was not filed until April 4, 2002, and was, therefore, clearly untimely. Further, the record contains no writing by Defendants extending the time limit for filing. Accordingly, there is a fatal defect regarding the timeliness of the Complaint upon which the default judgment was taken, and the judgment must be stricken. See *Tully Drilling Co., Inc.*, 597 A.2d at 1231-34.

Even if the Complaint had been timely filed, the default judgment would have to be stricken, as the Complaint was not properly served. “The practice and procedure to obtain judgment upon a [mechanics’ lien] claim filed shall be governed by the Rules of Civil Procedure promulgated by the Supreme Court.” 49 P.S. § 1701(a). “[O]riginal process shall be served within the Commonwealth only by the sheriff.” Pa.R.C.P. No. 400(a). A complaint to obtain judgment on a mechanics’ lien is original process. See

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<sup>2</sup> It is clear that the amended claim is invalid, as a mechanics’ lien claim may only be amended “by agreement of the parties or by leave of court.” 49 P.S. § 1504. The record reveals no such agreement or leave of court.

Pa.R.C.P. No. 1653 (action to obtain judgment on mechanics' lien claim shall be commenced by filing complaint); *Hogg Const., Inc. v. Yorktowne Med. Ctr., L.P.*, 78 A.3d 1152, 1157 (Pa. Super. 2013), *appeal denied*, 87 A.3d 816 (Pa. 2014) (mechanics' lien claim and action to obtain judgment upon claim are separate and distinct). In this case, the proof of service attached to the Complaint states that the Complaint was hand-delivered to Defendants, not served by the sheriff. Thus, once again, the record in support of the default judgment is defective.<sup>3</sup>

Finally, it should be noted that even if the Complaint had been timely filed and properly served, and even if the Court declined to strike the default judgment, the default judgment has been discharged and may not be enforced for any purpose. The default judgment on the mechanics' lien claim was filed on June 3, 2002. The Property was sold at sheriff's sale on June 7, 2002. "It is well established in Pennsylvania that a sheriff's sale of real property discharges *all* liens which are not satisfied of record at the time of sale." *Pub. Fed. Sav. & Loan Ass'n v. Neumann*, 483 A.2d 505, 507 (Pa.

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<sup>3</sup> Likewise, the mechanics' lien claim upon which the Complaint was filed was not properly served. "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." 49 P.S. § 1502(c). In this case, the proof of service attached to the lien claim indicates that it was served by mail, making the lien invalid. As noted above, the purported amended mechanics' lien claim is likewise defective. Nevertheless, there is no proof of service with regard to the amended claim, and nothing in the record indicates that it was served on Defendants, let alone by the sheriff.

Super. 1984); *see also* 49 P.S. § 1705 (judgment on mechanics' lien claim limited to liened property).

For all of the above reasons, the mechanics' lien claim, the amended mechanics' lien claim, the Complaint to obtain judgment on the mechanics' lien claim, and the default judgment on the Complaint are defective as failing to comply with applicable law and the applicable rules of civil procedure. Thus, the mechanics' lien claim and the default judgment will be stricken.

WHEREFORE, the Court enters the following:

**IN THE COURT OF COMMON PLEAS OF  
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**JAMES WRIGHT and GLORIA  
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**No. 1999-ML-4558**

**ORDER OF COURT**

AND NOW, this 4<sup>th</sup> day of June, 2015, Patricia G. Fritzinger's "Petition to Strike Judgment/Open Judgment and/or Set Aside and/or Quash Judgment," filed on July 31, 2014, is hereby **GRANTED**, in part. It is hereby **ORDERED** as follows:

1. The "Mechanic's [sic] Lien Claim," filed on June 10, 1999, is hereby **STRICKEN**;
2. The "Amended Mechanic's [sic] Lien Claim on Mechanic's [sic] Lien Claim 1999-ML-4558," filed on October 27, 1999, is hereby **STRICKEN**;
3. The "Praecipe for Lis Pendens," filed on February 12, 2002, is hereby **STRICKEN**; and



4. The default judgment entered on June 3, 2002, is hereby  
**STRICKEN.**

BY THE COURT:

/s/ Anthony S. Beltrami  
J.