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*Maish & Mysliwsky*  
*7/34/85*  
*5248 Holman*  
*Am 46320*

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF LAKE )

POWERS AND SONS CONSTRUCTION  
COMPANY, INCORPORATED,

Plaintiff,

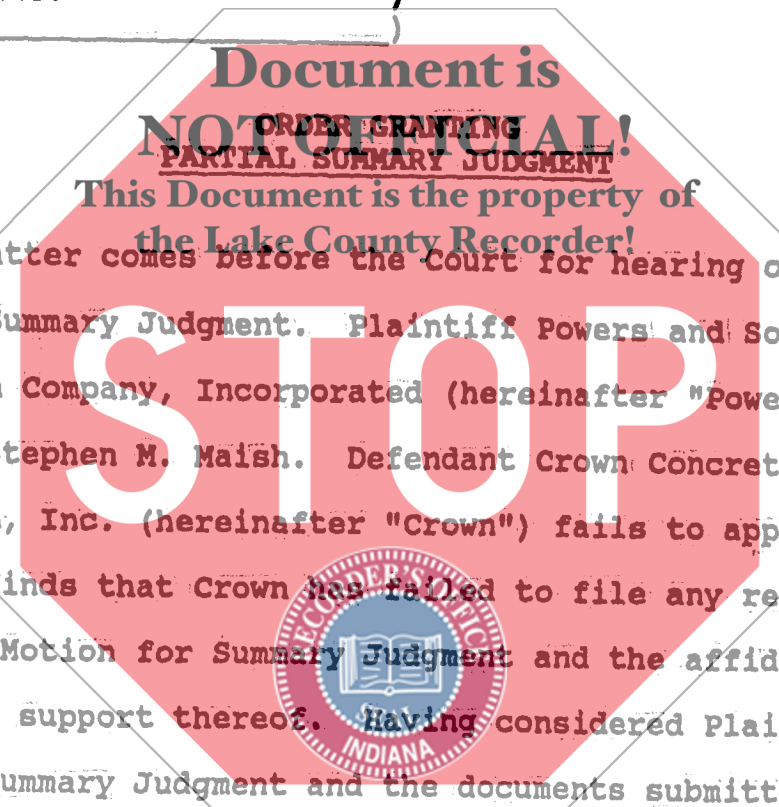
v.

CROWN CONCRETE CONSTRUCTION,  
INC.,

Defendant.

IN THE LAKE SUPERIOR COURT  
CIVIL DIVISION, ROOM NO. ONE  
SITTING AT HAMMOND, INDIANA  
CONTINUOUS TERM

CAUSE NO. 45D01-9212-CP-1556



STATE OF INDIANA/S.S.C.  
FILED  
MAR 18 8 40 AM '93  
RECORDED  
CLERK

This matter comes before the Court for hearing on Plaintiff's Motion for Summary Judgment. Plaintiff Powers and Sons Construction Company, Incorporated (hereinafter "Powers") appears by counsel Stephen M. Maish. Defendant Crown Concrete Construction, Inc. (hereinafter "Crown") fails to appear. The Court also finds that Crown has failed to file any response to Plaintiff's Motion for Summary Judgment and the affidavit submitted in support thereof. Having considered Plaintiff's Motion for Summary Judgment and the documents submitted in support thereof and having held a hearing on said Motion, the Court now grants said Motion and enters a final partial summary judgment as to Counts II, III, and IV of Plaintiff's Complaint.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

**Filed in Open Court**

MAR 17 1993

*Robert C. Antle*  
CLERK LAKE SUPERIOR COURT

1700

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.

2. The project at issue in this action is the Indiana Vocational Technical College, Business, Science & Administration Building erected at 35th & Martin Luther King in Gary, Lake County, Indiana (hereinafter "Project"). The Court hereby finds and declares that said Project is a "public" project within the meaning of relevant Indiana statutes and case law. The Court also finds and declares that the Project is a "public building" and/or "public work" and/or "public improvement" within the meaning of Indiana Code Section 5-16-5-1.

3. Crown is not entitled to a lien against the real estate upon which the Project is located and/or the improvements thereon because under Indiana law mechanic's liens cannot attach to public real estate and improvements thereon. See, e.g., Repp and Mundt, Inc. v. Hitzelberger Supply Co., Inc. (1976), 170 Ind. App. 539, 353 N.E.2d 547, transfer denied.

4. Crown is also not entitled to a lien against the real estate upon which the Project is located and/or the improvements thereon because it did not file any action to foreclose its lien within one (1) year from the date of the filing of its Sworn Statement of Intention to Hold Lien as required by Indiana Code Section 32-8-7-1.

5. The Court now finds and declares that the Sworn Statement of Intention to Hold Lien that Crown recorded on March 22, 1991 with the Office of the Recorder of Lake County, Indiana as

Document No. 91013151 is null and void, invalid, and of no force and effect.

6. Crown is not entitled to assert any claims under Indiana Code Section 32-8-3-9 because such section does not apply to public projects. See, e.g., Jeffries v. Myers (1894), 9 Ind. App. 563, 37 N.E. 301.

7. Crown is also not entitled to any mechanic's lien rights under Indiana Code Section 32-8-3-9 because it did not file any action to foreclose its lien within one (1) year from the date that its "alleged" debt was due as required by Indiana Code Section 32-8-7-1.

8. The Court now finds and declares that the letter dated September 11, 1992 sent by Robert E. Stochel, Attorney for Crown, to John Hancock, Indiana Vocational Technical College, which letter asserted a lien in funds pursuant to Indiana Code Section 32-8-3-9, is null and void, invalid, and of no force and effect.

9. Crown did not file a "claim within sixty (60) days from the last labor performed, last material furnished, or last service rendered by them" with the Trustees of the Indiana Vocational Technical College as required by Indiana Code Section 5-16-5-1 in order to assert a lien in funds owed to Powers.

10. Since Crown did not file a timely claim in accordance with Indiana Code Section 5-16-5-1, it has no lien in or claims against any funds owed by the Trustees of the Indiana Vocational Technical College to Powers. See, e.g., MacDonald v. Calumet Supply Co. (1939), 215 Ind. 536, 19 N.E.2d 567, rehearing denied, 215 Ind. 536, 21 N.E.2d 400.

11. The Court now finds and declares that Crown has no lien in or claims against any funds owed by the Trustees of the Indiana Vocational Technical College to Powers.

12. The Court now finds and declares that there is no basis in law or in fact for the Trustees of the Indiana Vocational Technical College to withhold any payments to Powers because of the lien claims or notices filed, recorded, and/or served by Crown. To the extent that payments to Powers are being withheld because of said lien claims or notices of Crown, said payments should be immediately released so as to avoid further damages.

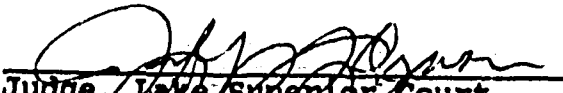
13. Any damage claims of Powers that relate to the payments withheld by the Trustees of the Indiana Vocational Technical College because of the lien claims or notices of Crown are not being determined or resolved by this Order and all such claims shall remain pending. The Court will set a hearing on said claims upon request of any party to this action.

14. The claims of Powers set forth in Count I of the Complaint are not being determined or resolved by this Order and all such claims shall remain pending. The Court will set a hearing on said claims upon request of any party to this action.

15. There is no just reason for delay and thus, this Order is a FINAL JUDGMENT as to all matters and issues resolved by this Order. Any appeal from this Order shall be taken in the same manner as appeals from final judgments are taken.

16. The Clerk of this Court is ordered to serve a copy of this Order by mail upon the attorneys of record in accordance with Indiana Trial Rule 72(D).

IT IS SO ORDERED, ADJUDGED, AND DECREED on this 17th day of  
March, 1993.

  
Judge, Lake Superior Court  
Civil Division, Room No. One



LAKE COUNTY RECORDER'S OFFICE  
3/17/93



I hereby certify this is a true, correct and complete copy of the order of court entered of record in Cause

Number 45,001-92-12 CP-1556 on March 17 19 93

Witness my hand and the seal of said court

this 17<sup>th</sup> day of March 19 93

Robert E. Antich

Clerk Lake Superior Court

By Theresa H. Allen  
Deputy