

**AMC Mech. Servs., Inc. v ERST One Grand Cent.
Place, LLC**

2017 NY Slip Op 30885(U)

May 2, 2017

Supreme Court, New York County

Docket Number: 154853/2015

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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AMC Mechanical Services Inc.,
Plaintiff,

Index 154853/2015
**DECISION
and ORDER**

- v -

ESRT ONE GRAND CENTRAL PLACE, LLC,
C. STASKY ASSOCIATES LTD. and CHUCK
STASKY,

Mot. Seq. #001

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff AMC Mechanical Services Inc., (“AMC”) commenced this action against Defendants ESRT One Grand Central Place, LLC, (“ESRT”), C. Stasky Associates Ltd. (“Stasky Ltd.”) and Chuck Stasky (“Stasky”) for payments due under a service contract. On May 13, 2015, Plaintiff AMC filed a summons and complaint against Defendants ESRT, Stasky Ltd. and Stasky. AMC’s first cause of action alleges that pursuant to a contract dated March 5, 2014, AMC provided heating ventilation and air conditioning services to Stasky Ltd. at “60 East 42nd Street, 29th Floor, Borough of Manhattan, County of New York, State of New York” (“the 42nd street premises”). However Stasky Ltd. failed to make total payments thereby breaching the contract. The second cause of action alleges that AMC provided heating ventilation and air conditioning services for Stasky Ltd. at the 42nd Street premises but Stasky Ltd. did not pay certain invoices in the amount of \$48,285.00. The third cause of action alleges that Stasky Ltd. was unjustly enriched by AMC’s performance of services and the fourth cause of action is for quantum meruit. The fifth cause of action alleges that ESRT, the owner of the 42nd street premises, did not pay a mechanics lien in the amount of \$48,285.00 that AMC filed with the Clerk of the County of New York on February 9, 2015. The sixth cause of action alleges that Stasky Ltd. and Stasky have unlawfully diverted trust funds relating to AMC’s contract with Stasky Ltd.

On July 22, 2015, ESRT filed a Verified Answer and counterclaimed that AMC willfully exaggerated the amount of the mechanic’s lien. On July 30, 2015, Stasky Ltd. and Stasky filed a Verified Answer cross-claiming that if it was “determined that the defendants were liable to AMC, such liability is attributable solely to the culpable acts of a third party and defendants are entitled to recover all such amounts therefrom.”

On January 5, 2017, ESRT moved for summary judgment pursuant to CPLR 3212 dismissing the fifth cause of action to foreclose the mechanic's lien. ESRT also moved pursuant to Lien Law § 19 to cancel and discharge the mechanic lien on record with the County Clerk. ESRT moved pursuant to CPLR 3211 (a) to dismiss the cross-claim asserted by Stasky Ltd. and Stasky against ESRT for failure to state a cause of action. Lastly, ESRT moved to be dismissed from the action thereby also dismissing ESRT's counterclaim against AMC.

ESRT avers that the Mechanic's Lien has not been discharged by the filing of a discharge bond or undertaking or by the deposit of monies into the Court. However ESRT argues that the Mechanic's Lien has been extinguished by operation of law because Plaintiff did not file a notice of pendency or choose to extend the Mechanics Lien pursuant to Lien Law § 17.

In support, ESRT submits the attorney affirmation of Parshhueram T. Misir dated January 5, 2017; the Summons and Complaint; the Verified Reply to ESRT One Grand Central Place LLC's counterclaim; the Notice Under Mechanic's Lien Law dated February 9, 2015; the deed executed by 60 East 42nd St. Associates LLC.; a copy of the Mechanics Lien Book Update from the New York County Clerk dated November 9, 2016; ESRT One Grand Central Place LLC's Verified Answer with Counterclaim; the Verified Answer of C. Stasky Associates Ltd. and Chuck Stasky; and a printout of the document list with respect to this case from NYSCEF.

ESRT's motion is submitted without opposition.

Lien Law § 17 provides that, "No lien specified in this article shall be a lien for a longer period than one year after the notice of lien has been filed, unless within that time an action is commenced to foreclose the lien, and a notice of the pendency of such action, whether in a court of record or in a court not of record, is filed with the county clerk of the county in which the notice of lien is filed . . . or unless an extension to such lien . . . is filed with the county clerk of the county in which the notice of lien is filed within one year from the filing of the original notice of lien, continuing such lien and such lien shall be docketed as of the date of filing such extension . . ."

"Pursuant to Lien Law § 17, a mechanic's lien expires one year after filing unless an extension is filed with the County Clerk or an action is commenced to foreclose the lien within that time and a notice of pendency is filed in connection therewith." (*Aztec Window & Door Mfg., Inc. v 71 Village Road, LLC*, 60 AD3d

795, 796 [2d Dept 2009]) “In the event neither of these conditions is accomplished within the statutory period, nor is a further extension of the lien obtained by order of the court, the lien automatically expires by operation of law, becoming a nullity and requiring its discharge.” (*id.*)

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law. (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]). That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. (*id.*) Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. (*id.*) The affirmation of counsel alone is not sufficient to satisfy this requirement. (*id.*) In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]).

ESRT has made a *prima facie* showing of entitlement to judgement as a matter of law, by submitting a copy of the Mechanics Lien Book Update from the County Clerks Office. (ESRT’s exhibit D) This record shows that as of November 9, 2016, AMC had only filed a Mechanics Lien with respect to the 42nd street premises on February 9, 2015. AMC was required to file a notice of pendency or extension by February 9, 2016 but as of November 9, 2016, it had not. Additionally, this Court did not issue any order extending the lien. Therefore, ESRT has shown that the mechanic’s lien automatically expired by operation of law and became a nullity.

Where the movant has established a *prima facie* showing of entitlement to summary judgment, the motion, unopposed on the merits shall be granted. (*See generally Access Capital v DeCicco*, 302 AD2d 48, 53-54 [1st Dept 2002]) By failing to oppose, AMC, Stasky Ltd. and Stasky have failed to raise any issue of material fact to preclude the granting of summary judgment in ESRT’s favor.

Wherefore, it is hereby,

ADJUDGED that Defendant ESRT One Grand Central Place, LLC’s motion for summary judgment against Plaintiff AMC Mechanical Services, Inc., dismissing the fifth cause of action to foreclose the mechanic’s lien is granted without opposition; and it is further

ADJUDGED that Defendant ESRT One Grand Central Place, LLC’s motion to cancel and discharge the mechanic’s lien is granted; and it is further

ADJUDGED that Defendant ESRT One Grand Central Place, LLC's motion to dismiss the cross-claim asserted by C. Stasky Associates Ltd. and Chuck Stasky is granted; and it is further

ADJUDGED that Defendant ESRT One Grand Central Place, LLC's motion to be dismissed from this action thereby dismissing ESRT's counterclaim against AMC Mechanical Services, Inc., is granted.

This constitutes the decision and order of the Court. All other relief requested is denied.

DATED: May 2, 2017



EILEEN A. RAKOWER, J.S.C.