

Your Vet 1, LLC v Eastman, Cooke & Assoc., LLC

2023 NY Slip Op 34474(U)

December 19, 2023

Supreme Court, New York County

Docket Number: Index No. 157679/2023

Judge: Shahabuddeen Abid Ally

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHAHABUDDEN ABID ALLY PART 16TR

Justice

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YOUR VET 1, LLC,

Petitioner,

- v -

EASTMAN, COOKE & ASSOCIATES, LLC,

Respondent.

INDEX NO. 157679/2023

MOTION DATE 09/22/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-24 were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN

Petitioner brings this proceeding pursuant to Lien Law §§ 38 and 39 seeking an order vacating and discharging the mechanic’s lien filed by respondent against the property leased by petitioner. Respondent has filed its answer and opposes the requested relief. Upon the above cited papers, the petition is granted to the extent set forth below.

Petitioner is the tenant of the premises commonly known as 200 Chambers Street, New York, New York (“Property”). On or about August 10, 2022, petitioner and respondent entered into an agreement for certain construction work to be performed at the Property (“Contract”). Pursuant to the Contract, petitioner would pay to respondent \$713,383.22. Petitioner avers that it paid this amount to respondent as agreed.

On June 14, 2023, respondent filed a mechanic’s lien against the property for the amount of \$687,842.11, alleged to arise from change orders over the contractual sum (Petition exhibit A, NYSCEF No. 2). On July 14, 2023, petitioner served a demand for itemized statement (Petition

exhibit B, NYSCEF No. 4). After receiving no response, petitioner then served two-day notice pursuant to Lien Law § 38 on July 26, 2023 (Petition exhibit D, NYSCEF No. 5).

Petitioner subsequently commenced the instant proceeding. Respondent answered and filed opposition, annexing an itemized statement comprising a verified statement along with copies of the Contract, initial estimate, and an unsigned application for certification for payment with change order value schedule (Affidavit in Opposition, exhibit B, NYSCEF No. 19).

Lien Law § 38 provides that “[a] lienor who has filed a notice of lien shall, on demand in writing, deliver to the owner or contractor making such demand a statement in writing which shall set forth the items of labor and/or material and the value thereof which make up the amount for which he claims a lien, and which shall also set forth the terms of the contract under which such items were furnished.” Upon a lienor’s failure to comply with a demand within five days or a lienor’s delivery of an insufficient statement, the person or entity making the demand may, on two days’ notice in writing, seek an order compelling the lienor to adequately respond (*id.*). Failure to further respond may result in an order canceling the lien (*id.*).

While itemization is not required in all disputes (*F.J.C. Cavo Const., Inc. v Robinson*, 81 AD2d 1005 [4th Dept 1981]), itemization is required where there is a dispute as to the work performed or the value of the work performed (*see, e.g. Matter of Plain Ave. Storage, LLC v BRT Mgt., LLC*, 165 AD3d 1264 [2d Dept 2018]) or where there is a claim for extra work and materials (*see, e.g. Matter of 819 Sixth Ave. Corp. v T & A Assoc.*, 24 AD2d 446 [1st Dept 1965]). “The purpose of the itemization is to apprise the owner of the details of the lienor’s claim” (*see Associated Bldg. Servs. Inc. v Pentecostal Faith Church*, 112 AD3d 1130, 1131 [3d Dept 2013]). In light of this purpose, the statement should include “the description, quantity and costs of various kind of materials and the details as to the nature of labor, time spent and hourly

or other rate of the labor charge (*Matter of 819 Sixth Ave. Corp. v T & A Assoc.*, 24 AD2d at 446).

Here, respondent has provided a copy of the itemized statement provided to petitioner (Affidavit in Opposition exhibit B, NYSCEF No. 19). Albeit untimely, this statement included a verified breakdown of sums alleged to be owing, a copy of the contract between the parties, a list of the drawings relating to the project, and an unsigned application and certificate for payment with a continuation sheet listing the values for each claimed change order (*id.*). However, the unsigned application does not establish that the claimed work was completed, and the continuation sheet simply lists a single value for each category of work without any description of the nature of the change order, the quantity and costs of the materials required, or any detail at all about the nature and cost of the labor involved. This is insufficiently detailed to satisfy respondent's obligation under Lien Law § 38, as the statement "should clearly show the difference between the contract work and that of the extras, with itemization of the labor and material comprising the extras" (*Matter of Pinckney v Ocean Home Enters.*, 13 AD2d 806 [2d Dept 1961]; *see also 819 Sixth Ave. Corp. v T & A Assoc.*, 24 AD2d at 446).

However, the Court declines to discharge the lien as this time, as it is authorized by Lien Law § 38 to direct respondent's compliance with the itemization demand. Should respondent fail to respond or provide a sufficient response, petitioner may make the appropriate application pursuant to Lien Law § 38.


Additionally, the Court declines to discharge the lien based upon petitioner's arguments in the alternative, as petitioner's papers do not provide any basis to conclude at this time that the lien was deliberately and intentionally exaggerated or the result of anything other than an honest difference of opinion (*see Goodmna v Del-Sa-Co Foods, Inc.*, 15 NY2d 288 [1965]).

Accordingly, it is hereby:

ORDERED that the petition is granted to the extent that respondent is directed to provide petitioner with the appropriate itemized statement within ten days of service upon respondent of this Order with notice of entry, and denied as to the remaining relief requested.

This constitutes the decision and order of the court.

12/19/2023
DATE


SHANABUDEEN ABID ALLY, A.J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE