

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[FILED: December 12, 2014]

A. SALVATI MASONRY, INC.

:

VS.

:

C.A. No. KM-2013-1278

:

MICHAEL ANDREOZZI AND

:

AMY ANDREOZZI

:

:

DECISION AND ORDER

RUBINE, J. In this case Plaintiff A. Salvati Masonry, Inc. (Salvati or lienor) seeks to enforce a mechanic’s lien on property located at 6 Old Farm Road, East Greenwich, Rhode Island (the Property) owned by the Defendants Michael Andreozzi and Amy Andreozzi (Andreozzis or owners). In response to a Complaint to Enforce Mechanic’s Lien filed by Salvati, the owners have filed a petition to show cause pursuant to G.L. 1956 § 34-28-17.1.¹

The Andreozzis’ petition to show cause alleges Salvati cannot enforce a mechanic’s lien on the Property, based upon the following alleged facts:

- 1. The Andreozzis are owners of the Property.

¹ Defendants caption the pleading as “Memorandum of Law in Support of Petition to Show Cause,” whereas the statute refers to an application made upon a verified complaint accompanied by other written proof of facts upon which the application is made.” Notwithstanding the failure to adhere to the technical requirements of the statute, and in light of the evidentiary hearing scheduled by the Court in this Decision and Order, the Court will consider the Memorandum filed herein as the application called for under § 34-28-17.1; and, will proceed accordingly and determine on the evidence presented at such hearing if the lien in question is invalid or “without probability of a judgment rendered in favor of the lienor.” This section was added by the General Assembly in response to Mr. Justice Silverstein’s decision; see Gem Plumbing and Heating Co. v. Rossi, 867 A.2d 796 (R.I. 2005). The amendment was designed to be curative of the constitutional infirmities resulting from the mechanic’s lien statute, in that it provides for a prompt post-deprivation hearing in the form of an expedited show cause proceeding to determine if there is a probability of judgment in favor of the lienor. Id. at 810-11.

2. Salvati originally performed work on the Property as a subcontractor—Pariseault Builder's, Inc. (Pariseault or the general contractor).
3. By the autumn of 2012, Pariseault had substantially completed its work as the general contractor, but at that time Salvati's masonry work had not been completed.
4. As of spring 2013, Salvati allegedly had two remaining tasks to perform at the Property based upon its original subcontract with Pariseault. It is further alleged that in the winter of 2013, the owners were considering having Salvati perform additional work at the Property—work not contemplated by the original contract.
5. Also, in the winter of 2013, it was agreed among the owners, Salvati and Pariseault that Pariseault would withdraw as general contractor; and for future masonry work, Salvati would work directly for the owners.
6. The only obstacle to Pariseault's withdrawal as general contractor was that some of Salvati's masonry work originally contained in its subcontract with Pariseault was not substantially completed.

Accordingly, to facilitate Pariseault's withdrawal, Salvati allegedly agreed with the owners that as to masonry work yet to be completed, Salvati would work directly with the owners.

7. In the spring of 2013, Pariseault agreed with the owners to reduce the original contract price. As part of this agreement, the owners acknowledged that in return for their payment to Pariseault of the reduced contract price, the contract was marked "paid in full." Salvati also signed this document, allegedly acknowledging its agreement that the original contract for which Salvati served as masonry subcontractor was paid in full.
8. On the same day, Salvati signed a release of lien, acknowledging that it had been paid in full for all work performed and material provided under its subcontract with Pariseault.
9. Salvati thereafter agreed with the owners to perform additional work at the Property. The additional work commenced in the spring of 2013.
10. Salvati claims it is entitled to lien the Property because all work in 2013 was performed as Pariseault's subcontractor, notwithstanding its acknowledgement that it had been paid in full for all work performed under the subcontract with Pariseault.
11. It is alleged that Salvati failed to send owners a notice of a possible mechanic's lien in accordance with § 34-28-4.1.

12. It appears that Salvati does not contest its failure to give notice but contends that based upon the facts alleged, it was not required to give such notice. The Andreozzis have invoked the opportunity for a prompt post-deprivation hearing under § 34-28-17.1 seeking dismissal of Salvati's lien enforcement action, contending the lien is invalid; that there is no basis for the lien; and, that the lien enforcement action is without the probability of judgment.

From the pre-hearing memoranda, there is no clarity as to whether the Salvati lien results from work performed when it was a subcontractor for Pariseault or for work performed in 2013, after the general contractor left the job.

The Court believes that the General Assembly intended that the post-deprivation hearing be prompt, and that the facts should be determined by the factual allegations in the verified petition to show cause and other written proof of facts upon which the petition to show cause is based. The procedure set forth in § 34-28-17.1 seems similar to the opportunity for summary judgment available in other civil actions. In other words, if the movant, under Super. R. Civ. P. 56, can demonstrate through affidavits or other evidentiary material that there are no disputes as to material facts, the Court may then enter judgment based upon the undisputed facts. However, under Rule 56, if it appears that there are genuine issues of material fact, the case cannot be concluded pretrial but must await trial to allow the Court an opportunity to hear the evidence and resolve disputed factual issues.

It appears from the memoranda submitted to date that there are factual disputes concerning the predicate facts material to this Court's determination of the validity of the lien asserted by Salvati. Accordingly, in order to provide the owners a prompt opportunity to be heard, afforded to them by § 34-28-17.1, the Court believes an evidentiary hearing will be necessary before the Court can act on the petition to show cause. The scheduling of a show cause evidentiary appears to be the procedure tacitly approved by the Rhode Island Supreme Court, in the only reported

decision on the procedures to follow under § 34-28-17.1. See Alpha Omega Constr., Inc. v. The Proprietors of Swan Point Cemetery, 962 A.2d 733 (R.I. 2008).

Accordingly, it is hereby ORDERED:

1. A show cause evidentiary hearing is scheduled to commence at 9:30 a.m. on Wednesday, January 14, 2015. The parties must be prepared at that hearing to present evidence material to the question of whether the lienor may enforce a mechanic's lien on the Property or, that the lienor has no probability of judgment in its favor.
2. In advance of said hearing, that is, on or before January 7, 2015, the parties shall file pre-hearing memoranda identifying the witnesses and/or exhibits on which each party intends to rely in support of or in opposition to the petition to show cause.
3. To the extent the parties can agree to all or some of the material facts or exhibits, the Court will accept and consider an appropriate stipulation, to be filed on or before January 7, 2015.

ENTER:

PER ORDER:

Allen P. Rubine
Associate Justice

Clerk

Date: _____



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: A. Salvati Masonry, Inc. v. Michael Andreozzi and Amy Andreozzi

CASE NO: KM 2013-1278

COURT: Kent County Superior Court

DATE DECISION FILED: December 12, 2014

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

For Plaintiff: Joseph R. Daigle, Esq.

For Defendant: Raymond R. Pezza, Esq.