

88 Greenwich LLC v Onesource NY, LLC

2004 NY Slip Op 30394(U)

August 23, 2004

Supreme Court, New York County

Docket Number: 109186/04

Judge: Karen S. Smith

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 44

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88 GREENWICH LLC, LIONSHEAD 110
DEVELOPMENT LLC, LIONSHEAD 53
DEVELOPMENT LLC, and
HIGHLAND DEVELOPMENT LLC,

-against-

Petitioners,

Index No.: 109186/04
Mot. Seq.: 001
Motion Date: July 21, 2004

ONESOURCE NY, LLC.,

DECISION AND ORDER

Respondent.

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PRESENT: KAREN S. SMITH, J.:

The petition for an order, pursuant to Lien Law § 19(6), summarily discharging the four mechanic's liens filed by respondent, is granted.

On May 20, 2004, respondent Onesource, NY, Inc. caused notices of four mechanic's lien to be filed in the office of the Clerk of the County of New York, against the interests of petitioners in the premises at (a) 71 Broadway Avenue, New York, New York, (b) 88 Greenwich Street, New York, New York, (c) 53 Park Place, New York, New York and (d) 50 Murray Street, New York, New York. Each lien states that the material and labor furnished were "janitorial services and supplies."

Petitioners 88 Greenwich LLC, Lionshead 110 Development LLC, Lionshead 53 Development LLC, and Highland Development LLC, the owners of the above listed premises, seek a discharge of the mechanic's liens on the basis that the notices of liens are invalid due to the

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character of labor and materials furnished.

Respondent opposes the application to discharge the liens on the ground that the liens are valid on their face and, as such, they are entitled to the Lien Law's protection as the janitorial services provided at the premises, including, *inter alia*, carpet spot cleaning, floor buffing, vacuuming, housekeeping and garbage removal, constituted permanent improvements to the premises.

It is axiomatic that the purpose of the Lien Law is to protect workers who, with the consent or at the request of owner of real property, enhance the value of that property by performing labor, thereby improving it. (*Wahle-Phillips Co. v Fitzgerald*, 225 NY137 [1919]; *West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.*, 87 NY2d 148, 157, [1995]). Lien Law § 3 provides that a mechanic's lien attaches for a "contractor, subcontractor, laborer or materialman, landscape gardener, nurseryman . . . who performs labor or furnishes materials for the improvement of real property...."

Lien Law § 2(4) defines "the improvement of real property" as including

[T]he demolition, erection, alteration or repair of any structure upon, connected with, or beneath the surface of, any real property and any work done upon such property or materials furnished *for its permanent improvement*, and shall also include any work done or materials furnished in equipping any such structure with any chandeliers, brackets or other fixtures or apparatus for supplying gas or electric light and shall also include the drawing by any architect or engineer or surveyor, of any plans or specifications or survey . . . [emphasis added].

The Lien Law does not empower the courts to cancel or discharge mechanics' liens upon a summary application upon any grounds other than those specified in that law. (*Matter of Cohen (No. 1)*, 209 AD 413 [2d Dept 1928]; *In re Lowe*, 4 AD3d 476 [2d Dept 2004]). Section 19(6) of the Lien Law provides courts the statutory authority to discharge a mechanic's lien "[w]here it appears from the face of the notice of lien that the claimant has no valid lien by reason of the character of the labor

or materials furnished and for which a lien is claimed.” (*See also, Aaron v Great Bay Contracting*, 290 AD2d 326 [1st Dept 2002]).

In determining the validity of a notice of lien, the issue is “were the labor performed and materials furnished for the purpose of making a permanent accession to the realty?” (*Watts-Cambell Co v Yeunling*, 125 NY 1 [1890]). An important factor in the inquiry is whether the owner intended for the improvement to be permanent. (*Monroe Savings Bank v First Natl Bank*, 50 AD2d 314, 319 [4th Dept 1976] *lv denied* 39 NY2d 708). *New York Artcrafts Inc. v Marvin*, 29 Misc2d 774 [District Ct Nassau County 1961], a case upon which respondent relies for the proposition that its liens are valid as janitorial services constitute a permanent improvement on real property, provides a helpful understanding of what a “permanent improvement” is:

In this connection the word 'permanent' associated with the word 'improvement' is important. In the absence of this word any improvement upon realty might authorize a lien therefor. The hired man who mowed the lawn, the farm hand who ploughed the field, or sewed the grain, the gardener who trimmed the trees or cut the shrubbery might file liens upon the property for his labor. Such services are, however, in their nature temporary, and must be repeated with the recurring seasons. Obviously, services, or labor of this character, do not constitute 'permanent improvement' of real property within the meaning of the statute [citation omitted]).

(*Id* at 775-776).

Petitioners' application is granted having demonstrated that the notices of liens filed by respondent are invalid on their face by reason of the character of the labor or materials furnished. The janitorial services and materials furnished constituted temporary improvements and were not for the “permanent improvement” of the property.

Petitioners' request for sanctions and other related relief is denied.

Accordingly, it is hereby

ORDERED that the petition is granted to the extent that the Clerk is directed to discharge of record the four notices of mechanic's liens filed on May 20, 2004 and May 27, 2004, by respondent Onesource, NY, Inc., with the Clerk of the County of New York, against the premises at 71 Broadway Avenue, New York, New York, 88 Greenwich Street, New York, New York, 53 Park Place, New York, New York and 50 Murray Street, New York, New York.

This constitutes the decision and order of the court.

Dated: August 23, 2004

ENTER:



J.S.C.

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