

Matter of Windermere Holdings, LLC (Murray Eng'g, P.C.)
2012 NY Slip Op 31018(U)
March 30, 2012
Supreme Court, New York County
Docket Number: 104351/11
Judge: Paul Wooten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN

Justice

PART 7

In the Matter of the Application of
WINDERMERE HOLDINGS, LLC,
WINDERMERE PROPERTIES, LLC
Petitioners,

Index No.: 104351/11

For an Order Discharging the Mechanic's
Lien filed by

Motion Seq.: 003

MURRAY ENGINEERING, P.C.,
Respondent.

FILED

APR 04 2012

Premises: 400-406 West 57th Street
New York, New York
Block: 1066; Lot 32

NEW YORK
COUNTY CLERK'S OFFICE

The following papers numbered 1 to 4 were read on respondents's motion to reargue pursuant to CPLR 2221(d).

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answering Affidavits — Exhibits (Memo) _____	3
Replying Affidavits (Reply Memo) _____	4

Cross-Motion: Yes No

Before the Court is a motion by respondent Murray Engineering, P.C. (Murray), pursuant to CPLR 2221(d), for leave to reargue an order of this Court dated September 27, 2011 and entered on October 5, 2011, in which this Court granted petitioner Windermere Holdings, LLC's (Holdings) motion to vacate and cancel a notice of mechanic's lien filed by Murray against Holdings and also denied the portion of Murray's motion seeking to amend the lien nunc pro tunc to list Windermere Properties, LLC (Properties) as the owner of the premises (motion sequences 001 and 002, which were consolidated for purposes of disposition). Upon reargument, Murray seeks an order denying Holdings and Properties' petition to vacate Murray's mechanic's lien, directing the Clerk to reinstate the lien nunc pro tunc if already vacated, granting Murray's motion to amend the mechanic's lien nunc pro tunc, and granting

Murray's motion for attorneys' fees. Holdings and Properties are in opposition to Murray's application.

A motion for reargument is addressed to the sound discretion of the Court, and is designed to give a party a chance to convince the Court that relevant facts or law were overlooked or misapprehended (see CPLR § 2221[d][2]; *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]). The Court finds that respondent has demonstrated that the Court, in its order, dated September 27, 2011 and entered on October 5, 2011 overlooked or misapprehended certain matters of fact or law which would have changed the determination of the prior motion (see CPLR 2221[d][2]).

On or about May 13, 2002, Holdings registered in New York State as a Foreign Limited Liability Company, established in Jefferson County, Delaware (Notice of Motion, exhibit 2). On or about December 17, 2008, Properties was created as a Limited Liability Company in the State of New York (*id.*).

On or about May 20, 2009, TOA Construction Inc., Yuk Nam Kim and Masako Yamagata sold the Windermere building located at 400-406 West 57th Street (Building) Properties for \$13,000,000.00. Thereafter, Murray avers that Properties allegedly retained Holdings to manage and maintain the building. Both Holdings and Properties failed to produce any evidence of the management agreement between Properties and Holdings, and Holdings has not billed or collected any funds for its management or maintenance services pursuant to its agreement with Properties (Petitioner's Discovery Response, Respondents Supplemental Pleading, dated June 15, 2011, p.1-3 and Petitioner's response dated June 27, 2011, p.3 ¶ 2).

The Court record indicates that Mark Tress (Tress) is the principal of Holdings with offices at 419 Cedar Bridge Avenue, Suite 104 Lakewood, New Jersey. Tress is also the principal of Properties with offices at the same address. Tress, as well as both Holdings and Properties also share the same telephone number and litigation attorney. Moreover, the record

indicates that even after the mechanic's lien was filed, respondent, the New York City Department of Buildings and others, addressed correspondence to Holdings concerning the ownership of the Building.

In light of these circumstances, the Court holds that the lien merely misdescribed, not misidentified, the owner, and thus the lien is not jurisdictionally defective (see Lien Law § 9[7]; see also *PM Contr. Co. v 32 AA Assoc.*, 4 AD3d 198 [1st Dept 2004]; *Gates & Co. v National Fair & Exposition Assn.*, 225 NY 142 [1919]; *Peachy v First 97-101 Reade St. Assoc.*, 180 AD2d 474 [1st 1992]).

Moreover, case law has held that the requirement of Lien Law § 9(2) that the notice of lien state the name of the owner of the real property, "must be construed liberally to secure the beneficial interests and purposes [of the Lien Law]. A substantial compliance . . . [is] sufficient for the validity of a lien" (Lien Law § 23; see also *PM Contr. Co.*, 4 AD3d at 199; *Peachy*, 180 AD2d at 475; *Gates & Co.*, 225 NY at 155). While Murray apparently neglected to update the title search, such neglect caused no apparent prejudice to any existing lienors, mortgages or good faith purchasers (see Lien Law § 12-a[2]), therefore this Court finds, as did the Court in *PM Contr. Co.* (4 AD3d 198), that a rejection of the lien and dismissal of the action is not warranted (see *PM Contr. Co.*, 4 AD3d at 199-200 [1st Dept 2004]). Accordingly, Murray can amend the mechanic's lien nunc pro tunc to name Windermere Properties, LLC as the owner of the Building (see Lien Law § 12-a[2]).

For the foregoing reasons, Murray's motion to reargue is granted and upon reargument, this Court modifies its previous order dated September 27, 2011 and entered October 5, 2011 to the extent that the mechanic's lien, which was previously vacated, is hereby restored and Murray's motion to amend the mechanic's lien nunc pro tunc to name Windermere Properties, LLC as the owner of the Building is granted, but otherwise affirms its previous determination.

Accordingly, it is

ORDERED that Murray Engineering, P.C.'s motion to reargue, reconsider and modify the order of this Court dated September 27, 2011 and entered October 5, 2011 is granted; and it is further,

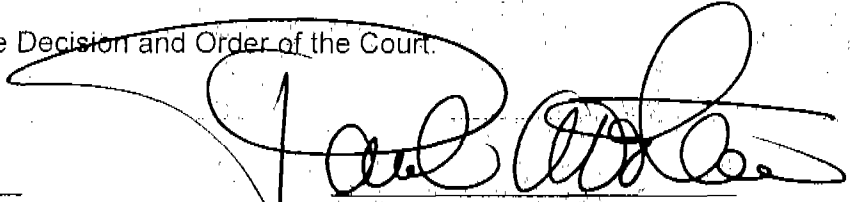
ORDERED that petitioners Windermere Holdings, LLC and Windermere Properties, LLC's motion to vacate Murray Engineering, P.C.'s mechanic's lien is denied; and it is further,

ORDERED that Murray Engineering, P.C.'s motion to amend its mechanic's lien nunc pro tunc to name Windermere Properties, LLC as the owner of the Windermere building located at 400-406 West 57th Street is granted; and it is further,

ORDERED that Murray Engineering, P.C. shall serve a copy of this order with notice of entry upon all parties and upon the Clerk of the Court, who is directed to reinstate Murray Engineering, P.C.'s mechanic's lien, which was previously vacated, nunc pro tunc.

This constitutes the Decision and Order of the Court.

Dated: 3-30-12


PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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