SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ELLEN M. COIN J.S.C. PART 63
Justice

Index Number : 150226/2012
ATA CONSTRUCTION CORP.
vs.
MAZL BUILDING LLC
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

This constitutes the decision and order of the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/13/13

_____, J.S.C.
ELLEN M. COIN J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 63

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A.T.A. CONSTRUCTION CORP.,

Plaintiff,

Index No.:
150226/2012

-against-

MAZL BUILDING LLC and
HIGH LINE HOLDINGS LLC,

Defendants.

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ELLEN M. COIN, J.:

Defendants Mazl Building LLC (Mazl) and High Line Holdings LLC (High Line) move, pursuant to CPLR 3212, for an order granting them summary judgment dismissing plaintiff A.T.A. Construction Corp.'s complaint. According to plaintiff, defendants still owe it $573,316.00 for construction services. Defendants maintain that no money is due or outstanding.

BACKGROUND AND FACTUAL ALLEGATIONS

In 2005 Mazl purchased the subject property located at 214-216 East 52nd Street, New York, NY (Building). Thereafter, in November 2005, plaintiff, a general contractor, entered into an agreement with Mazl to refurbish and renovate the Building into a restaurant and luxury apartments. Plaintiff describes this contract as "based upon Time and Materials supplied by [plaintiff] for the construction ...." Compl ¶7.

On June 21, 2006, Mazl sold the building to nonparty Patmos

Fifth Real Estate, Inc. (Patmos). Defendants provide a written, unsigned contract proposal from plaintiff dated November 6, 2006 for $1.99 million in construction services for the property.[1] Defs' ex C. Raba Abramov (Abramov), the owner of Mazl, alleges that Mazl was not a part of the new contract between Patmos and plaintiff. Abramov Aff ¶ 3. However, Abramov claims that Mazl entered into a series of secured mortgage agreements with Patmos for the construction, and that Mazl "paid directly to construction laborers and material providers whatever Patmos-endorsed invoices Mazl received." Abramov reply aff ¶11.

According to Abramov, Patmos defaulted in 2009, and Mazl "unwillingly" took repossession of 37.5% of the property. Abramov reply aff ¶14. A nonparty owned 62.5% of the property, subsequently transferring this interest to High Line on November 10, 2010. Abramov is the owner of High Line.

Abramov indicates that after the repossession Mazl had to hire people to complete and remedy the construction. He states that plaintiff was not involved in the construction work that occurred after the 2009 repossession by Mazl, and, indeed, was not even on the property.

Abramov claims that High Line had no contract with plaintiff. He explains that plaintiff was never physically on

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[1] Defendants maintain that this is the contract between Patmos and plaintiff. The proposal is on plaintiff's form, but no other parties are named.

the property after High Line became an owner, and that High Line was never involved in any of the construction.

In support of plaintiff's contentions, although Mazl was not part of the contract with Patmos, plaintiff claims that it "continued working as general contractor for the renovation of the Building with the knowledge and consent of both Patmos and Mazl." Compl ¶10. After High Line became an owner, plaintiff maintains, High Line knew of and consented to plaintiff's work. Tsachy Mishal (Mishal), plaintiff's vice-president, states:

> "Patmos was instructed by Abramov to enter a new contract with [plaintiff]. [Plaintiff was] instructed by Abramov to enter [sic] a new contract with Patmos, and we were instructed by Abramov as to what the terms would be. And, notwithstanding our new contract with Patmos, we were instructed by Abramov that we would continue to be paid on a time and materials basis by Mazl, who would continue funding the job. Mazl remained intimately involved in the work [plaintiff] performed at the property."

Mishal Aff in Opp ¶5.

Plaintiff maintains that the contract between Mazl and plaintiff began in 2005, and that plaintiff remained on the job, pursuant to defendants' direction, until August 2, 2011. Plaintiff alleges that it completed its obligations, thereby earning the sum of $2,822,842.00. To this date, plaintiff claims that it is still owed $573,316.00. On December 30, 2011, plaintiff filed a mechanic's lien on the premises in the amount of $573,316.00.

In support of its contention that the job continued beyond

2009 and that its work was not fully paid, plaintiff provides two checks Mazl issued to it in 2011.

Defendants maintain that Mazl instructed plaintiff to work only through 2006, and provide a list of Mazl payments to plaintiff through 2006. Defs' ex A. Defendants argue that the two checks Mazl issued in 2011 were not for work performed after Mazl's 2009 repossession of the Building. Instead, Abramov claims, "The September $20,000 check was for work to a Staten Island property and the September $80,000 check was an attempt to settle the Patmos debt so as to avoid this very litigation." Abramov reply aff ¶24 [emphasis in original].

Defendants allege that plaintiff was not involved in any construction work after the Mazl repossession in 2009. They provide deposition testimony from plaintiff in a personal injury action related to the property in which plaintiff's principal testified that it did not perform work on the property after 2008. Defendants note that a certificate of occupancy was issued in 2010, evincing that any material construction work would have been performed by this date. Defendants also provide records from the Department of Buildings which do not list plaintiff as seeking work permits or as general contractor after the 2009 repossession. Defs' ex U. However, defendants admit that Mazl made payments to plaintiff totaling $2,500 in December 2010, but have no explanation for these payments. Defs' ex X.

In response, plaintiff explains that while it was not physically on site late in the construction process, "it continued to provide services and subcontracted out the renovation work." Mishal aff ¶12. Plaintiff provides its bill summary for the construction project, alleging work performed on the property as late as August 2011. Plaintiff states that one of the repairs included chimney work performed in August 2011, in the amount of $53,889.00.[2]

On March 25, 2011, a condominium declaration for the property was filed. Prior to the filing, the property was Block 1325 and Lot 45. Subsequent to the filing, the property became block 1325 and lots 1301 through and including 1322. As of the declaration, six of the units were sold, with a seventh unit allegedly being the condominium association's ownership of the common areas. The sold units are block 1325, lot numbers 1302, 1308, 1312, 1313, 1318, and 1319, in addition to the seventh unit owned by the condominium board, presumably lot 1320. Defs' ex T.

Plaintiff's mechanic's lien named the subject property as 214, 216 East 52nd Street and listed the block-lot numbers as 1325-45, 1301, 1303, 1304, 1305, 1306, 1307, 1309, 1310, 1311, 1314, 1315, 1316, 1317, 1321, and 1322. Defs' ex Q.

Defendants claim that the lien is invalid since both the

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[2] The court notes that in the bill summary this is listed under September 18, 2011.

original block and lot numbers and the superceded block and lot numbers are listed. This would effectively attach the lien to the common elements of the condominium.

Plaintiff maintains that the lien is valid since it lists the individual units that plaintiff seeks to lien. It contends that even if any of the named lots have been sold or extend to common areas, the lien can be amended nunc pro tunc. Plaintiff urges that it is premature to determine the identity of the owners of the common area.

Plaintiff's first cause of action seeks to collect on its undischarged lien. The second cause of action is for breach of contract. The third cause of action is for unjust enrichment, and the fourth cause of action is for breach of trust under article 3-A of the Lien Law.

In moving for summary judgment, defendants maintain that the lien must be vacated since plaintiff imposed the lien on an entire condominium, not just upon the units defendants own. Defendants further contend that the lien has not been served on the other owners, and that it was untimely filed. They note that plaintiff has failed to respond to a demand for documentation of the lien pursuant to Lien Law §38.

On the breach of contract claim defendants maintain that there was no contract after 2006. Further, they argue that Mazl contracted with plaintiff prior to Patmos' ownership and that

plaintiff was paid for all of its work. In addition, they note that High Line did not become an owner of the property until 2010 and contend that it did not have any dealings with plaintiff. Thus, they argue, it cannot be liable for breach of contract.

Similarly, defendants claim that they should be granted summary judgment on the unjust enrichment claim, since they did not contract with plaintiff. Defendants assert that plaintiff, despite having a contract with Patmos and not being paid by Patmos, did not try to mitigate its damages by naming Patmos as a party to this litigation. On the breach of trust cause of action, defendants argue that they are entitled to summary judgment since there was no trust established for this property improvement.

DISCUSSION

I. Summary Judgment:

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 (1st Dept 2007), citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). Upon proffer of evidence establishing a prima facie case by the movant, "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of

fact.'" *People v Grasso*, 50 AD3d 535, 545 (1st Dept 2008), quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). The function of the court is one of issue finding, not issue determination. *Ferrante v American Lung Assn.*, 90 NY2d 623, 630 (1997).

II. The Mechanic's Lien:

Defendants seek to vacate plaintiff's lien in the amount of $573,316.00. Prior to the declaration of the condominium, the property was block 1325 and lot 45. After the declaration, the property became block 1325 and lots 1301 through and including 1322. Plaintiff's lien names the owner of the property as defendants and then includes in its identification of the property block number 1325 and lot number 45.

After the condominium declaration, seven of the units were sold. These seven units, block 1325, lots numbers 1302, 1308, 1312, 1313, 1318, 1319 and 1320, were not listed on the lien. Defendants contend that because the lien lists the original block and lot number, it is facially invalid. They argue that as a result of the lien, the owners of the seven sold units will be unjustly encumbered. Block 1325, lot 45 is now not only owned by defendants but is separated into distinct units. Therefore, listing this block-lot number on the lien would also attach to parts of the condominium that are common elements. Further, these seven owners did not receive notice of the lien.

Plaintiff acknowledges that it may have attached a lien to the common elements but argues that the lien can still be valid as to the lots which are lienable.

Defendants cite several cases suggesting that the lien is void for various reasons. In one of their citations the Appellate Division, First Department, vacated a mechanic's lien when the petitioner set forth the former superceded lot number for the entire condominium, as it "failed to describe properly the specific condominium units that the lienor sought to encumber." *Matter of Atlas Tile & Marble Works (S & H 88th St. Assoc.)*, 191 AD2d 247, 248 (1st Dept 1993). The lien was held invalid under Real Property Law §339-1 and Lien Law §9(7). *Id.* The petitioner was then unable to amend the lien pursuant to Lien Law §12-a, since the original lien was not valid, and the amendment would be prejudicial to an existing mortgagee. *Id.* Defendants cite other cases in which the courts invalidated liens for similar reasons. *See e.g. Matter of M.M.E. Power Enters. (Wolf & Son Enters.)*, 205 AD2d 631 (2d Dept 1994); *Matter of Country Vil. Hgts. Condominium*, 79 Misc 2d 1088 (Sup Ct, Rockland County 1975).

Real Property Law §339-1 provides in relevant part

> "Subsequent to recording the declaration and while the property remains subject to this article, no lien of any nature shall thereafter arise or be created against the common elements except with the unanimous consent of the unit owners. During such period, liens may arise or be created only against the several units and

their respective common interests."

Lien Law §9(7) provides that a valid lien must contain a description of the property subject to the lien that is sufficient for identification.

Defendants' cases are distinguishable, and they have failed to demonstrate that plaintiff's lien notice violated Real Property Law §339-1. In *Matter of Atlas Tile & Marble Works, Inc.*, the lien was filed solely against a superceded single lot number for the entire condominium building and did not identify the individual units. Here, however, while plaintiff did include the block-lot number applicable prior to the condominium declaration, it also listed the individual unsold units still owned by defendants. The sold units were properly left out of the notice of lien.

Nor did plaintiff's lien violate Lien Law §9(7). It listed the separate lot numbers assigned to each unit upon conversion, thereby properly describing the units that plaintiff sought to encumber. "[W]hile the description is not perfect, it adequately identifies defendants' property in light of the liberal construction mandated by Lien Law §23." *Mussen v Franklin Sq. Assoc., V., LLC*, 22 AD3d 1022, 1023 (3d Dept 2005); *see also East Coast Mines & Materials Corp. v Golf Course Props. Co.*, 228 AD2d 545, 546 (2d Dept 1996) (although description in lien included too much property, defect not fatal, as lien "would be limited

and restricted only to that part against which it could properly be enforced").

Courts have declined to invalidate a lien where the superceded single lot number as well as the individual condominium units were identified. Thus, in *JKT Constr. Inc. v Rose Tree Mgt. & Dev. Co.* (2009 NY Slip Op 31019[U], *9 [Sup Ct, NY County 2009]), the court held that where a lienor identified the superceded lot number as well as the individual lot numbers, the lien was still valid with respect to the unit and storage unit owned by the original owner. In *343-349 E. 50th St., LLC v W. Designe, Inc.* (2008 NY Slip Op 31955[U], *7 [Sup Ct, NY County 2008]), the court permitted amendment of a lien filed against a superceded condominium lot number, holding that "there is no *per se* rule that the use of superceded block and lot numbers in a Notice of Lien is a fatal defect. Rather, the property description must be sufficient for the lien to be limited, on its face, to that property which the lienor seeks to encumber."

Lien Law §12-a states the following, in pertinent part:

> "2. In a proper case, the court may, upon five day's notice to existing lienors, mortgagees and owner, make an order amending a notice of lien upon a public or private improvement, nunc pro tunc. However, no amendment shall be granted to the prejudice of an existing lienor, mortgagee or purchaser in good faith, as the case may be."

In this case the lien is distinguishable from those in defendants' citations and cannot be deemed to impose a "blanket

lien" against an entire property. Although the lien incorrectly lists the original block-lot number, improperly attaching the lien to the common elements, it also properly identifies the individual, unsold unit numbers. As such, the lien is invalid with respect to the original block-lot number, but is otherwise valid with respect to the individual lot numbers.

Furthermore, the lien can be amended pursuant to Lien Law §12-a, since, contrary to the cases relied upon by defendants, the lien is valid with respect to the correct individual unit numbers, and properly describes them. Defendants have not come forward with any new purchasers of the unsold units listed on the lien. Accordingly, no one will suffer prejudice by such amendment. The lien can be amended nunc pro tunc, to remove the original block-lot number, thereby leaving the property owned by defendants, the named owners.

Defendants argue that the lien should be invalidated since the owners of the property encumbered by the lien did not receive service. However, if the lien is amended withdrawing the original block-lot number, then service on the seven unit owners will not be required. Defendants have already been given proper notice of the other property encumbered by this lien.

Defendants argue that the lien was not timely filed. Pursuant to the Lien Law, a valid mechanic's lien must be filed within eight months of the final performance of work provided.

Lien Law §10(1). The lien was filed on December 29, 2011. Defendants argue that plaintiff last provided services in 2008. Plaintiff maintains that although it may not have been physically present, its subcontractors were on the property as late as August 2011, performing work at defendants' request. As such, according to plaintiff, the lien would be timely filed. Since questions of fact remain as to whether or not plaintiff performed work in 2011, summary judgment on plaintiff's first cause of action upon its lien cannot be granted.

Defendants allege that plaintiff exaggerated the lien, since they "have no idea how Plaintiff has calculated its lien amount." Lien Law §39 states the following:

> "In any action or proceeding to enforce a mechanic's lien upon a private or public improvement or in which the validity of the lien is an issue, if the court shall find that a lienor has wilfully exaggerated the amount for which he claims a lien as stated in his notice of lien, his lien shall be declared to be void and no recovery shall be had thereon."

Plaintiff has submitted its invoices for alleged outstanding balances. "Inaccuracy in amount of lien, if no exaggeration is intended, does not void a mechanic's lien; willfulness also must be shown." *Goodman v Del-Sa-Co Foods, Inc.*, 15 NY2d 191, 194 (1965)(citation and interior quotation marks omitted). Willfulness is a "credibility-based determination...." *Rosenbaum v Atlas & Design Contrs., Inc.*, 66 AD3d 576, 576 (1st Dept 2009). It is well settled that

credibility issues are "properly left for the trier of fact." *Yaziciyan v Blancato*, 267 AD2d 152, 152 (1st Dept 1999). As such, questions of fact remain as to whether or not the lien is exaggerated.

Defendants allege that they did not understand the basis for the lien and served demand for explanation pursuant to Line Law §38. Plaintiff has yet to respond to this demand. According to defendants, the lien is subject to vacatur for such failure to respond.

As plaintiff contends, this argument is premature. The court may vacate a lien only after the party refuses to comply with a court-ordered Lien Law §38 demand. Defendants have yet to petition the court to direct the lienor to deliver a statement of the outstanding value of labor and materials. *See e.g. Gardinier v Healey*, 222 AD2d 868, 869 (3d Dept 1995).

Thus, defendants have not met their burden demonstrating their entitlement to summary judgment on the cause of action seeking foreclosure of the mechanic's lien.

III. Breach of Contract:

Defendants contend that the contract between Mazl and plaintiff began in 2005 and was completed and paid for in 2006. Defendants allege that plaintiff's claim is actually upon a second, unrelated contract between Patmos and plaintiff that began in 2006. They rely on the $1.99 million proposal for

plaintiff's construction services, which, they allege, was between plaintiff and Patmos. Defendants also argue that High Line should not be a named party in this action since it did not become an owner until 2010 and never contracted with plaintiff.

Although plaintiff concedes that there was a contract between Patmos and plaintiff for construction services, it maintains that defendants were still involved in this agreement. According to plaintiff, defendants paid for the services rendered and plaintiff continued to perform work with the knowledge and consent of both defendants. These services continued until 2011, after the time when High Line became an owner.

Defendants further rely on the testimony of plaintiff's principal, in an unrelated personal injury action, that plaintiff completed the job in 2009, an admission that it was not present on the subject property after that date. Defendants also provide records from the Department of Buildings that name other contractors as seeking work permits on the property after 2009.

Plaintiff provides copies of two checks dated from 2011, paid to it by Mazl. One of the checks states in the memo section that it is for construction work at the subject property. Defendants maintain that these checks refer to the instant litigation, and also for work done at another property.

Plaintiff argues that while it may not have been on the property since 2009, its subcontractors continued doing

renovation work at the Building thereafter. In support, plaintiff attaches a bill for labor and materials listing the subcontractors and the dates that they performed work on the property up until 2011.

The elements of a breach of contract claim are: (1) the existence of a valid contract; (2) performance of the contract by the injured party; (3) breach by the other party; and (4) resulting damages. *Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 (1st Dept 2007), citing *Furia v Furia*, 116 AD2d 694 (2d Dept 1986).

Although there may not be a written contract between plaintiff and defendants for services performed after 2006, plaintiff has sufficiently demonstrated that there may have been an agreement between the parties for its services. The record indicates that Mazl at least paid for the construction services after 2006 up until 2011, demonstrating some involvement in the construction process. Although High Line did not become an owner until 2010, plaintiff has provided documentation of services rendered after that date. Defendants' allegations regarding plaintiff's credibility cannot be determined on a motion for summary judgment. *Ferrante v American Lung Assn.*, 90 NY2d at 631 (court's function on a motion for summary judgment is not to assess credibility).

In considering a summary judgment motion, evidence should be

viewed in the "light most favorable to the opponent of the motion." *People v Grasso*, 50 AD3d at 544, citing *Marine Midland Bank, v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 (2d Dept 1990). As such, defendants' motion for summary judgment on this cause of action is denied.

IV. Unjust Enrichment:

As noted, defendants allege that plaintiff was performing work pursuant to a contract between Patmos and plaintiff, and that the unpaid balance relates to that contract. Defendants further claim that they never requested plaintiff's presence on the property after 2009 and that they have no recollection of plaintiff being present on the property as of that date. Further, they insist that plaintiff must mitigate its damages by attempting to collect from Patmos.

Unjust enrichment is classified as a "quasi-contract claim" and invokes "an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties." *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 (2012) [internal quotation marks and citations omitted]. In order to successfully plead a claim for unjust enrichment, plaintiff must allege that "(1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered." *Id.* (internal quotation marks and

citation omitted).

Plaintiff's vice-president alleges that until August 2, 2011, both defendants participated in the construction and directed plaintiff. Mazl's claim that it had no relationship or awareness of plaintiff's presence at the property after the Patmos contract is without merit. Mazl acknowledges paying Patmos' invoices during the Patmos ownership period.

Despite conceding that Mazl paid for plaintiff's service during the Patmos contract, defendants still maintain that High Line was unaware and did not consent to any services performed by plaintiff on the property after High Line became an owner. High Line claims that no privity existed between plaintiff and High Line, since High Line did not have any dealings with plaintiff, and plaintiff was allegedly not even physically on the property after High Line became an owner.

"Although privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated." *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 (2011). The owner of Mazl also owns High Line. Plaintiff asserts that it provided work to the property after High Line became an owner. Viewing the evidence in the light most favorable to plaintiff, a question of fact remains as to defendants' allegations concerning the lack of relationship between plaintiff and High Line.

While the existence of a contract generally will preclude a claim for unjust enrichment, defendants deny entering into any contract with plaintiff after 2006. *Pappas v Tzolis*, 20 NY3d 228, 234 (2012). Until the breach of contract claim is resolved, it is premature to grant summary judgment on this quasi-contract claim. Defendants' contention that plaintiff did not mitigate its damages presents an issue of fact. *Bernstein v Freudman*, 180 AD2d 420, 421 (1st Dept 1992).

V. Trust Claim:

In its fourth cause of action, plaintiff alleges that defendants may have received construction financing for the labor and materials provided by plaintiff. As a result, plaintiff argues, defendants' use of these funds for purposes other than paying plaintiff is a breach of trust under article 3-A of the Lien Law. Article 3-A of the Lien Law creates

> "'trust funds out of certain construction payments or funds to assure payment of subcontractors, suppliers, architects, engineers, laborers, as well as specified taxes and expenses of construction.' We have repeatedly recognized that the 'primary purpose of article 3-A and its predecessors [is] "to ensure that 'those who have directly expended labor and materials to improve real property [or a public improvement] at the direction of the owner or a general contractor' receive payment for the work actually performed'".'"

Aspro Mech. Contr. v Fleet Bank, 1 NY3d 324, 328 (2004) (internal citation omitted).

Defendants claim, and provide supporting documents to show, that they financed the construction project and lent Patmos

money. However, numerous accounting requirements exist with respect to article 3-A, and defendants have not met their initial burden on a motion for summary judgment. *NY Professional Drywall of OC, Inc. v Rivergate Dev., LLC*, 100 AD3d 216, 221 (3d Dept 2012). Although plaintiff cannot recover on duplicative claims, it is entitled to pursue both its trust fund remedies and ordinary remedies in enforcing the lien. *Matter of New Rochelle Contr. Corp. v American Steel Erectors*, 304 AD2d 581, 582 (2d Dept 2003).

Accordingly, summary judgment is denied on this cause of action.

CONCLUSION

Accordingly, it is

ORDERED that defendants Mazl Building LLC and High Line Holding LLC's motion for summary judgment dismissing the complaint is denied; and it is further

ORDERED that plaintiff A.T.A. Construction Corp. file an amended notice of lien nunc pro tunc reflecting accurate block-lot numbers.

Dated: September 13, 2013

ENTER:

Ellen M. Coin, A.J.S.C.