

Y & B Light. & Elec. Supplies, Inc. v JYC Elec. Contr. Inc.

2014 NY Slip Op 30114(U)

January 16, 2014

Sup Ct, New York County

Docket Number: 151477/13

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

Y & B LIGHTING AND ELECTRICAL SUPPLIES, INC.,

Plaintiff,

-against-

INDEX NO. 151477/13
MOTION DATE 12 -11-2013
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

JYC ELECTRIC CONTRACTING INC., 14 LLC f/k/a
14 COMPANY, M & T REAL ESTATE TRUST,
successor in interest by merger to M & T REAL
ESTATE INC., TAOCON, INC., BRUCE SNYDER,
CONSTRUCTION LIEN CONSULTANTS
CONNECTICUT, LLC, "JOHN DOES"
and "JANE DOES," said names being fictitious, parties
intended being possible tenants or occupants of
premises, and corporations, other entities or persons
who claim, or may claim, a lien against the premises,

Defendants.

The following papers, numbered 1 to 8 were read on this motion to/for summary judgment:

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 4</u>
Answering Affidavits — Exhibits _____ cross motion _____	<u>5 - 6</u>
Replying Affidavits _____	<u>7 - 8</u>

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that TAOCON, INC.'s motion for summary judgment dismissing the Amended Verified Complaint as against it, is granted. 14 L.L.C. f/k/a 14 COMPANY's motion filed under Motion Sequence 002, for summary judgment dismissing the Amended Verified Complaint against it and granting a judgment under the First and Third counterclaims asserted in its answer, is granted only to the extent that the causes of action asserted against 14 LLC f/k/a 14 COMPANY in the Amended Verified Complaint are dismissed.

Taocon, Inc. seeks an Order for summary judgment dismissing the Amended Verified Complaint as against it, and awarding sanctions, costs and attorney fees pursuant to 22 N.Y.C.R.R. 130-1.1 based on plaintiff's frivolous conduct.

14 L.L.C. f/k/a 14 Company (hereinafter referred to as "14 LLC"), seeks an Order for summary judgment dismissing the First, Second and Fifth causes of action asserted in the Amended Verified complaint against it and granting summary judgment against the plaintiff on the First and Third Counterclaims asserted in its Verified Answer for willful exaggeration of the lien pursuant to Lien Law § 39 and the terms of the January 24, 2013, stipulation of settlement and release.

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

Plaintiff's claims are related to a construction project involving work performed for 244 West 14th LLC, (hereinafter referred to as "the tenant"), that sought to have improvements done for its nightclub. Taocon and certain subcontractors including the plaintiff had filed liens against 14 LLC and the tenant. Taocon settled its claims with the tenant and then paid a subcontractor, JYC Electrical Contracting, the amount owed as settlement. JYC Electrical Contracting is listed as inactive with the New York Department of State and has not interposed an answer in this action. The sums paid to JYC Electrical Contracting included plaintiff's portion of the settlement, which were never forwarded.

On January 24, 2013 Taocon, Inc. entered into and signed a "stipulation of settlement and release" with Bruce R. Snyder, the CEO of CLCC, identified as an "authorized agent" acting on behalf of the plaintiff and signing on plaintiff's behalf. The purpose of the settlement was to resolve plaintiff's mechanic's lien for the funds which were not forwarded by JYC Electrical Contracting. Taocon, Inc. provided a check dated January 24, 2013 to CLCC in the amount of \$5,500.00 to settle the matter and in exchange CLCC filed a Satisfaction of the Mechanic's Lien. On January 29, 2013, the settlement check was cashed.

The plaintiff brought this action to vacate the "stipulation of settlement and release" dated January 24, 2013 and restore the mechanic's lien. The Amended Verified Complaint alleges that the Construction Lien Consultants Connecticut LLC (hereinafter referred to as "CLCC") and Bruce R. Snyder as a representative of CLCC entered into a "Sham Settlement Agreement" with the defendants without plaintiff's consent. The Amended Verified Complaint also alleges that the defendants were aware that CLCC did not have authority to enter into the agreement but entered into the "Sham Settlement Agreement," because they would obtain a deep discount and avoid paying the full amount due.

There are five causes of action asserted in the Amended Verified Complaint: (1) for lien foreclosure against JYC Electric Contracting Inc., (2) unjust enrichment against 14 LLC., M & T Real Estate Trust, Taocon, Inc. CLCC and Bruce R. Snyder, (3) breach of contract against CLCC, (4) Piercing the Corporate Veil against CLCC and Bruce R. Snyder, and (5) for a declaratory judgment finding that there still exists a valid lien on the property and voiding the "Sham Settlement Agreement."

In order to prevail on a motion for summary judgment pursuant to CPLR §3212, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (Zuckerman v. City of New York, 49 N.Y. 2d 557, 404 N.E. 2d 718, 427 N.Y.S. 2d 595 [1980]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence in admissible form, sufficient to require a trial of material factual issues (Amatulli v. Delhi Constr. Corp., 77 N.Y. 2d 525, 571 N.E. 2d 645; 569 N.Y.S. 2d 337 [1999]).

A stipulation is a contract and subject to the same principles that apply to contract interpretation. To the extent that the stipulation is clear and unambiguous with the intent easily determined from the face of the agreement, interpretation is a matter of law and summary judgment will be granted (Rainbow v. Swisher, 72 N.Y. 2d 106, 527 N.E. 2d 258, 531 N.Y.S. 2d 775 [1988]). The courts become circumscribed when there is a

stipulation from relevant issues to the exclusion of disputed matters that might otherwise be available to the parties (*Deitsch Textiles v. New York Property Insurance Underwriting*, 62 N.Y. 2d 999, 468 N.E. 2d 669 479 N.Y.S. 2d 487 [1984]). The Court is not free to reform a stipulation to conform to what it thinks is proper once the parties have agreed to the terms and signed the stipulation (*Hotel Cameron, Inc. v Purcell*, 35 A.D. 3d 153, 827 N.Y.S. 2d 13 [N.Y.A.D. 1st Dept., 2006]).

A stipulation of settlement is considered binding, and under circumstances where a client is not present at the time it is entered into, even if there is no actual authority, the court may conclude that there is "apparent authority" to act. To establish the creation of "apparent authority," the court may rely on, "...words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into the transaction." (*Hallock v. State*, 64 N.Y. 2d 224, 474 N.E. 2d 1178, 485 N.Y.S. 2d 510 [1984] and *Clark v. Bristol-Myers Squibb and Co.*, 306 A.D. 2d 82, 761 N.Y.S. 2d 640 [N.Y.A.D. 1st Dept., 2003]). A party may be deemed to have implicitly ratified a settlement by making no formal objection for months after being advised of it (*Clark v. Bristol-Myers Squibb and Co.*, 306 A.D. 2d 82, *supra*).

Taocon Inc. contends that it is entitled to summary judgment and the mechanic lien should remain satisfied with the Amended Verified Complaint dismissed because of its reliance on CLCC's repeatedly holding itself out as plaintiff's agent, throughout the negotiation process. Taocon Inc. claims that based on its reliance on CLCC's representations, there was no reason to suspect the agreement was entered into without authority. Taocon Inc. also contends that the documentary evidence annexed to the motion papers, including plaintiff's retainer agreement with CLCC which authorizes settlement of the lien, establishes that the "stipulation of settlement and release" was validly signed by CLCC (Mot. Seq. 001, Exhs. C-1). Taocon Inc. claims that plaintiff has conceded and admitted that it retained CLCC to act as its agent.

14 L.L.C. contends that the agreement between plaintiff and CLCC does not indicate any limitation on authority or that plaintiff's approval is required before a settlement is reached, and stated no facts or provided proof in support of the claim of a "Sham Agreement." 14 L.L.C. claims that because it was not a party to the previous action it is not a signatory, but that the "stipulation of settlement and release" at paragraph 3 clearly provides that it is a, "...full and final settlement of all claims and disputes" that plaintiff may have against 14 L.L.C.. 14 L.L.C. also contends that the satisfaction of the lien filed on January 24, 2013, is a basis to deny lien foreclosure since the lien no longer exists, and that the plaintiff has not stated a basis for reinstatement. 14 L.L.C. claims that there is no basis for the equitable claim of unjust enrichment because there was a binding settlement contract. 14 L.L.C. provides a copy of a letter from CLCC, dated February 27, 2013, that advises plaintiff that the claims against the named defendants were settled and the basis for the settlement, to refute plaintiff's claim that it was unaware of the settlement until after commencement of this action.

Plaintiff opposes both Taocon Inc. and 14 L.L.C. motion contending that neither Bruce R. Snyder or CLCC had authority to settle the case." Plaintiff claims that although Mr. Snyder and CLCC had initially advised him of settlement progress, they stopped doing so prior to signing the "stipulation of settlement and release." Plaintiff

also contends that the defendants are liable because they did not rely on his words or conduct and were unaware of the terms of the agreement with CLCC prior to entering into the "stipulation of settlement and release." Plaintiff claims that he had previously advised the defendants that he would not settle for less than the full amount owed on the mechanic's lien, but that they chose to proceed with the "sham settlement agreement" because it benefitted them. Plaintiff further contends that the unauthorized vacatur of the mechanic's lien is a basis to have it reinstated.

Frivolity as defined by 22 NYCRR 130-1.1, requires conduct which is continued when its lack of legal or factual basis should have been apparent to counsel or the party. The imposition of sanctions requires a pattern of frivolous behavior (*Sarkar v. Pathak*, 67 A.D. 3d 606, 889 N.Y.S. 2d 184 [N.Y.A.D. 1st Dept. 2009]).

Lien Law §39 requires evidence of a willful exaggeration of the amount owed, based on its purpose, which is to punish exaggeration and not "honest differences." (*E-J Elec. Installation Co. v. Miller & Raved, Inc.*, 51 A.D. 2d 264, 380 N.Y.S. 2d 702 [N.Y.A.D. 1st Dept. 1976]). Lien Law §39 is applied in conjunction with Lien Law §39-a, and both typically require evidence to establish the willful or fraudulent exaggeration (*CPN Mechanical, Inc. v. Madison Park Owner LLC*, 94 A.D. 3d 626, 942 N.Y.S. 2d 527 [N.Y.A.D. 1st Dept., 2012] and *Aaron v. Great Bay Contracting, Inc.*, 290 A.D. 2d 236, 736 N.Y.S. 2d 359 [N.Y.A.D. 1st Dept., 2002]).

Taocon Inc. and 14 L.L.C. have met their prima facie burden and established a basis to obtain summary judgment dismissing the causes of action asserted against them in the Amended Verified Complaint. Plaintiff has not met its burden of proof or raised an issue of fact related to its claims of a "Sham Settlement Agreement," with Taocon Inc. and 14 L.L.C.. The defendants relied on Bruce R. Snyder and CLCC acting as plaintiff's agent for purposes of entering into the "stipulation of settlement and release." The authorization and contract entered into between the plaintiff and CLCC does not state any limitation of authority. Plaintiff has not established that it had no notice of the settlement until after commencement of this action. Plaintiff has not stated a basis to reinstate the satisfied mechanic's lien.

Taocon, Inc. has not stated a prima facie basis for sanctions, costs and attorney fees pursuant to 22 N.Y.C.R.R. 130-1.1 based on frivolous conduct. Plaintiff acted to reinstate the mechanics lien and brought this action based on its belief that Bruce R. Snyder and CLCC were not authorized to act on its behalf and that the defendants were aware of the lack of authorization.

14 LLC has not stated a prima facie basis to obtain summary judgment on the First and Third Counterclaims asserted in its Verified Answer for willful exaggeration of the lien pursuant to Lien Law § 39, and pursuant the terms of the "stipulation of settlement and release."

Accordingly, it is ORDERED that TAOCON, INC.'s motion for summary judgment on its First through Fourth Affirmative Defenses, dismissing the Amended Verified Complaint as against it, is granted, and it is further,

ORDERED that the causes of action in the Amended Verified Complaint asserted against TAOCON, INC., are severed and dismissed, and it is further,

ORDERED that the remainder of the relief sought in TAOCON, INC.'s motion for sanctions, costs and attorney fees pursuant to 22 N.Y.C.R.R. 130-1.1, is denied, and it is further,

ORDERED that 14 L.L.C. f/k/a 14 COMPANY's motion filed under Motion Sequence 002, for summary judgment dismissing the Amended Verified Complaint against it, is granted , and it is further,

ORDERED that the causes of action in the Amended Verified Complaint asserted against 14 L.L.C. f/k/a 14 COMPANY, are severed and dismissed, and it is further,

ORDERED that the remainder of the relief sought in 14 L.L.C. f/k/a 14 COMPANY's motion seeking a judgment on the First and Third Counterclaims asserted in its Verified Answer, is denied, and it is further,

ORDERED that the clerk is directed to enter judgment accordingly.

ENTER:

MANUEL J. MENDEZ
J.S.C.


MANUEL J. MENDEZ,
J.S.C.

Dated: January 16, 2014

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE