Centrifugal Assoc. Group LLC v Newell Contr., Inc.
2019 NY Slip Op 31509(U)
May 21, 2019
Supreme Court, Kings County
Docket Number: 523703/18
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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CENTRIFUGAL ASSOCIATES GROUP LLC,
Plaintiff, Decision and order

- against - Index No. 523703/18

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NEWELL CONTRACTING, INC., &
KRZYSZTOF BIELAK,
Defendants, May 21, 2019
--x
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a default judgement against the defendants. The defendant Bielak has cross-moved seeking to dismiss the action as to him or in the alternative to be allowed to file a late answer. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff, a contractor, was hired by the Durst Organization to perform construction work at 1-02 26th Avenue in Queens County. The plaintiff hired defendant Newell Contracting as a subcontractor to perform certain work. On September 17, 2018 Newell filed a Mechanic's Lien alleging they are owed $320,000 for work performed that remains unpaid. The plaintiff instituted the instant lawsuit alleging two causes of action. The first is a breach of contract action against Newell, alleging Newell did not fulfill its obligations under the subcontractor agreement. The second

cause of action is against Newell and Bielak, the president and an officer of Newell, for defamation. Specifically, the plaintiff alleges the Mechanic's Lien contained false and damaging information and thus the defendants committed defamation.

The plaintiff filed the instant motion seeking judgement against both defendants. Newell has not answered the complaint and has not opposed this motion. Therefore, the motion seeking summary judgement against defendant Newell is granted. The parties will be notified about an inquest date to assess damages.

Concerning defendant Bielak he has opposed the motion and presents three arguments. First, he asserts he cannot be individually liable since he signed the Mechanic's Lien in a corporate capacity. He then argues that in any event statements contained within a Mechanic's Lien are not actionable as defamation. Lastly, Bielak argues he has presented a reasonable excuse for defaulting and maintains a meritorious defense and that consequently he should be permitted to file a late answer.

It is well settled that while a corporate officer may not be held liable for a corporation's wrongs merely because such person is an officer, the individual may be liable for tort in

an individual capacity even without piercing the corporate veil (see, Ramos v. 24 Cincinatus Corp., 104 AD3d 619, 961 NYS2d 465 [1st Dept., 2013]). However, no such liability can attach for an alleged breach of contract (Fletcher v. Dakota Inc., 99 AD3d 43, 948 NYS2d 264 [1st Dept., 2012], see, also, Murtha v. Yonkers Child Care Association Inc., 45 NY2d 913, 411 NYS2d 219 [1978]). Thus, the allegation encompassing defamation, if true, would devolve upon Bielak in his individual capacity.

There are no cases in New York that expressly permit defamation actions based upon the filing of a false Mechanic's Lien. The case cited by the plaintiff, J & D Evans Construction Corp., v. Iannucci, 84 AD3d 1171, 923 NYS2d 864 [2d Dept., 2011] concerned a claim alleging injurious falsehood which is distinct from defamation (see, Waste Distillation Technology, Inc., v. Blasland & Bouck Engineers P.C., 136 AD2d 633, 523 NYS2d 875 [2d Dept., 1988]). Moreover, J & D Evans (supra) does not explicitly involve a Mechanic's Lien. Likewise, Neptune Estates, LLC, v. Big Poll & Son Construction LLC, 39 Misc3d 649, 961 NYS2d 896 [Supreme Court Kings County 2013] did not hold that defamation is available for a false Mechanic's Line. Indeed, that case listed seven causes of action that one could pursue upon a false Mechanic's Lien and defamation is not included within

that list. Thus, the court held that "a number of common law remedies are available to a property owner where damages result from the wilful exaggeration of a lien. For example, a lienor that wilfully exaggerated a lien may be liable for: '(1) fraud; (2) disparagement (sometimes called slander of title); (3) interference with contract (to extent such lien interferes with existing contracts); (4) interference with prospective business advantage (to extent such lien interferes with potential deals); (5) extortion; (6) malicious prosecution; and (7) malicious abuse of process'" (id). Again, Masaryk Tower Corp., v. Anastasi, 2005 WL 6334468 [Supreme Court New York County 2005] likewise does not involve the tort of defamation.

There is one case wherein the tort of defamation was alleged based upon a false Mechanic's Lien, however, the court did not address the "acceptability" of that claim (see, E-J Electric Installation Co., 51 AD2d 264, 380 NYS2d 702 [1st Dept., 1976]).

However, it is clear that the filing of a Mechanic's Lien is privileged from which no defamation may follow. Thus, in A.F. Brown Electrical Contractor Inc., v. Rhino Electric Supply Inc., 137 Cal.App. 4th 118, 41 Cal. Rptr. 3d 1 [Court of Appeal, Fourth District, Division 3, California 2006] the court noted that "the filing of a mechanic's lien is

privileged because the claim of lien is authorized by law and related to an action to foreclose" (id). While there is dispute among the states regarding the nature of the privilege, whether it is conditional, qualified or absolute, there can really be no dispute such lien is privileged (see, Gregory's Inc., v. Haan, 545 NW2d 488 [Supreme Court of South Dakota 1996], Jeffrey v. Cathers, 104 SW3d 424 [Missouri Court of Appeals, Eastern District, Division One 2003], Frank Pisano & Associates v. Taggart, 29 Cal. App.3d 1, 105 Cal. Rptr. 414 [Court of Appeal, First District, Division 1, California 1972]).

The legal basis for a rule categorizing a Mechanic's Lien as privileged is to permit the efficient administration of justice (Park Knoll Associates v. Schmidt, 59 NY2d 205, 464 NYS2d 424 [1983]). As noted in Impallomeni v. Meiselman, Farber, Packman & Eberz, P.C., 272 AD2d 579, 708 NYS2d 759 [2d Dept., 2000] "it is well settled that a statement made in the course of a judicial proceeding 'is absolutely privileged if, by any view or under any circumstances, it may be considered pertinent to the litigation'" (id). The court does not adopt the holding of Dering v. Pierson Group LLC, v. Rockstar Design LLC, 2018 WL 313099 [Court of Appeals of Minnesota 2018] which held that a cause of action for defamation based upon a false Mechanic's Lien was available since the statements contained

in the Mechanic's Lien were not privileged.

Thus, since a Mechanic's Lien is pertinent to the litigation it is privileged. Consequently, the motion seeking summary judgement is denied and the cross-motion dismissing the defamation cause of action is granted.

So ordered.

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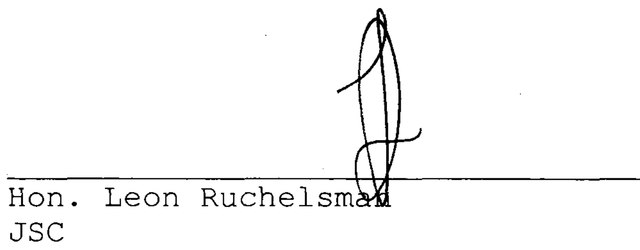

DATED: May 21, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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