

Jerrick Assoc., Inc. v Rudd Realty Mgt. Corp.

2019 NY Slip Op 31980(U)

July 9, 2019

Supreme Court, New York County

Docket Number: 156952/2018

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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JERRICK ASSOCIATES, INC.,
Plaintiff,

- v -

RUDD REALTY MANAGEMENT CORP., 215 EAST 80
CONDOMINIUM

Defendant.

-----X

INDEX NO. 156952/2018
MOTION DATE 05/24/2019
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30

were read on this motion to/for LEAVE TO FILE

In this action to foreclose on a mechanic's lien, plaintiff Jerrick Associates moves pursuant to CPLR 3025 for leave to serve a supplemental summons and complaint to add the Board of Managers of 215 East 80 Condominium as a defendant. Defendants cross-move pursuant to CPLR 3211(a)(1) and (7) to dismiss the first cause of action in the complaint to foreclose on the mechanic's lien and pursuant to Lien Law § 19(6), vacating the plaintiff's mechanic's lien and canceling the notice of pendency filed by plaintiff in connection with the mechanic's lien.

Plaintiff Jerrick Associates entered into a contract with the Board of Managers of 215 East 80 Condominium to perform certain work to the condominium's façade. Affirmation of Stephen J. Sassoon dated April 10, 2019, Exh. B (Complaint, ¶ 7) & Exh. D (Amended Answer and Counterclaims, ¶ 18-19). After a contract dispute, plaintiff filed a mechanic's lien which described the property subject to the lien as: New York, County of New York, State of New York, 215 East 80th Street, New York, NY, Block 1526, Lots 1201-1347. Affidavit of Frederick

J. Rudd sworn to on April 24, 2019, Exh. B. Further, the notice of lien incorrectly identified 215 East 80 Condominium as the fee owner of the property. *Id.*

Pursuant to Lien Law § 19(6), a lien may be discharged “where it appears from the face of the notice of lien that the claimant has no valid lien because of the character of the labor or materials furnished and for which a lien is claimed, or where for any other reason the notice of lien is invalid because failure to comply with the provisions of section nine of this article. . . .” Lien Law § 19(6). Here, the description of the property subject to the lien is inadequate because it failed to limit the lien to the particular units in the condominium, if any, which were claimed to be subject to the lien, but rather imposed a “blanket lien” on the entire property. *In re 49 East 21 LLC v. C.H. Schmitt & Co.*, 46 A.D.3d 391, 391 (1st Dep’t 2007); *Diamond Architecturals, Inc. v. EFCO Corp.*, 179 A.D.2d 420, 421 (1st Dep’t 1992); *Advanced Alarm Technology, Inc. v. Pavilion Associates*, 145 A.D.2d 582, 584 (1st Dep’t 1988). Further, the lien is insufficient to encumber the common areas of the condominium as there is no evidence of unanimous consent of the unit owners pursuant to Real Property Law § 339-1. *In re 49 East 21 LLC*, 46 A.D.3d at 392; *see also Matter of MME Power Enterprises*, 205 A.D.2d 631, 632 (2d Dep’t 1994). Finally, the notice of lien is defective in that it fails to specify the correct name of the owner of the real property. *Diamond Architecturals, Inc.*, 179 A.D.2d at 421. While Lien Law § 12-a permits amendment of the notice of lien *nunc pro tunc*, the notice at issue contains more than one defect and thus there has not been substantial compliance with the Lien Law to warrant such an amendment. *Id.* Accordingly, the cross-motion to vacate the notice of lien and dismiss plaintiff’s first cause of action must be granted.

However, plaintiff has asserted two additional causes of action for breach of contract and account stated, which are not the subject of defendants’ cross-motion. Thus, plaintiff’s motion for

leave to serve a supplemental summons and amended complaint to add the Board of Managers of 215 East 80 Condominium as a defendant should be granted.

Accordingly, it is

ORDERED that the cross-motion to dismiss is granted and the first cause of action in the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to vacate and cancel plaintiff Jerrick Associates, Inc.'s mechanic's lien in the amount of \$88,685.25 for the subject property located at 215 East 80th Street, New York, New York, Block 1526, Lots 1201-1347; and it is further

ORDERED that the plaintiff's motion for leave to amend the complaint is granted to the extent that the Board of Managers of 215 East 80 Condominium may be added as a defendant on the remaining two causes of action; and it is further

ORDERED that plaintiff shall file its amended complaint in conformity with this order within thirty days of entry of this order and such amended complaint will be deemed served upon all parties who have appeared in this action upon such filing; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

Jerrick Associates, Inc.,

Plaintiff,

-against-

Rudd Realty Management Corp., 215 East 80 Condominium, and

Board of Managers of 215 East 80 Condominium,

Defendants.

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)).

ORDERED that counsel are directed to appear for a preliminary conference in Room 320, 80 Centre Street, on September 26, 2019, at 9:30 AM.

7/9/19
DATE


PAUL A. GOETZ, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE