

**11 W. 126th St. Lender 1 LLC v 11 W. 126th Holdings
LLC**

2019 NY Slip Op 33464(U)

November 21, 2019

Supreme Court, New York County

Docket Number: 850027/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH

PART IAS MOTION 32

Justice

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INDEX NO. 850027/2018

11 WEST 126TH STREET LENDER 1 LLC,

MOTION DATE [REDACTED]

Plaintiff,

MOTION SEQ. NO. 002

- v -

11 WEST 126TH HOLDINGS LLC, RAVINDRANATH SURIA,
DAVID FINEHIRSH, 11 WEST 126TH STREET LENDER 2
LLC, NEW YORK CITY ENERGY EFFICIENCY
CORPORATION,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 127, 128, 129, 130, 131, 132, 133, 134, 135

were read on this motion to/for

INTERVENE

The motion by proposed intervenor Banta Homes Corp. ("Banta") for permission to intervene is granted in part and denied in part.

Background

In this commercial foreclosure action, non-party Banta moves to intervene. Banta claims it was the general contractor for work done at the property, that it has filed a mechanic's lien and it is owed over a \$1 million. Banta also argues that its mechanic's lien should take priority over plaintiff's building loan with respect to any potential surplus monies available after the property is presumably sold at a foreclosure auction. There is no dispute among the parties that plaintiff's land mortgage takes first priority.

Plaintiff opposes the motion by claiming that Banta's motion is untimely and that Banta's mechanic's lien is junior to its building loan. Banta claims its mechanic's lien is superior to the

building loan because plaintiff failed to comply with Lien Law § 22, which requires that the contract for a building loan must be filed on or before the building mortgage is recorded. Banta points out that the building mortgage was recorded on July 13, 2017 and the building contract contains a stamp dated July 18, 2017 from the County Clerk's office.

Discussion

“Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action. Distinctions between intervention as of right and discretionary intervention are no longer sharply applied” (*Yuppie Puppy Pet Products, Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 201, 906 NYS2d 231 [1st Dept 2010]).

“Consideration of any motion to intervene begins with the question of whether the motion is timely. In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party” (*id.*).

Plaintiff commenced this action on February 1, 2018 but did not file an RJI until May 3, 2019. That means this case was not assigned to a judge for more than a year. Banta made the instant motion on September 20, 2019. Based on these circumstances, the Court is unable to find that Banta's motion is untimely. While Banta's intervention might delay the resolution of this case, the fact is that plaintiff did very little to prosecute its case for more than a year. Banta's motion came only about three months after plaintiff finally decided to make a motion for summary judgment and file an RJI.

The Court also finds that Banta has a bona fide interest in this case. There is no doubt that Banta filed a mechanic's lien for the property and that it raised a legitimate question as to

whether it has priority over plaintiff's building loan pursuant to Lien Law § 22. The stamp on the building contract is clearly dated five days *after* the building mortgage was recorded with the city register. Although plaintiff claims that the building contract was mailed via overnight delivery to the County Clerk on July 11, 2017, plaintiff did not attach a receipt or tracking number or anything else to verify that the document was mailed. Therefore, because plaintiff seeks to foreclose on *both* the land mortgage and the building loan, it is necessary for Banta to intervene as its mechanic's lien might take priority over plaintiff's building loan.

However, the Court declines to grant the branch of Banta's motion to consolidate this case with a pending mechanic's lien case. While that matter may involve similar issues, the plaintiff in that case is not a party to this action (it appears to be another lienholder who did work on the property).

Accordingly, it is hereby

ORDERED that the motion by non-party Banta Homes Corp. to intervene is granted to the extent that this party may intervene in this action and denied to the extent the motion sought to consolidate this matter with a pending mechanic's lien foreclosure case; and it is further

ORDERED that Banta Homes Corp. shall upload its proposed answer (NYSCEF Doc. No. 101) on or before December 4, 2019 and plaintiff shall respond on or before January 15, 2020; and it is further

ORDERED that this determination has no effect on the summary judgment decision previously entered by this Court (NYSCEF Doc. No. 105); and it is further

ORDERED that Banta Homes Corp. shall be added to the caption, and the caption shall read as follows:

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

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11 WEST 126TH STREET LENDER 1 LLC,

Plaintiff,

v.

11 WEST 126TH HOLDINGS
LLC, RAVINDRANATH SURIA, DAVID
FINEHIRSH, 11 WEST 126TH STREET LENDER
2 LLC, NEW YORK CITY ENERGY EFFICIENCY
CORPORATION, BANTA HOMES CORP.,

Defendant(s).
-----X

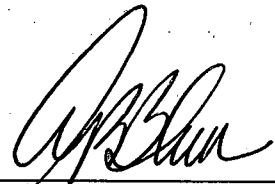
and it is further

ORDERED that counsel for Banta Homes Corp. shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the party 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));

Next Conference: March 10, 2020 @ 2:15 p.m.

11.21.19
DATE


ARLENE P. BLUTH, J.S.C.

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