

Pilot Contr. Inc. v Frost Contrs. Corp.

2020 NY Slip Op 32193(U)

July 6, 2020

Supreme Court, Kings County

Docket Number: 507951/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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PILOT CONTRACTING INC., Individually and on
behalf all of Beneficiaries of the Trusts
hereinafter alleged,

Plaintiff, Decision and order

- against -

Index No. 507951/19

FROST CONTRACTORS CORP., 145 HUNT LLC.,
People of the State of New York, and
John Doe #1 through 24, inclusive, the
last 24 named Defendants being unknown
and named fictitiously, the parties being
all persons having or claiming an interest
in or Lien upon the premises hereinafter
described,

Defendants, July 6, 2020

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PRESENT: HON. LEON RUCHELSMAN

The defendant 145 Hunt LLC has moved seeking to reargue a decision and order dated October 23, 2019 which denied their request to cancel and discharge a Mechanic's Lien filed by the plaintiff. The plaintiff has cross-moved seeking a default judgement against Frost Contractors Corp. and seeks sanctions against 145 Hunt LLC for the failure to respond to a demand pursuant to Lien Law §76. The plaintiff has also moved seeking to amend the complaint to assert causes of action against additional mortgagees. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After hearing all the arguments this court now makes the following determination.

As recorded in the prior order the defendant 145 Hunt LLC

entered into a contract with defendant Frost Contractors Corp., to construct a three story building on a lot owned by 145 Hunt LLC. Frost entered into a contract with subcontractor Pilot Contracting Inc., the plaintiff in the action. The plaintiff claims it is owed additional sums in the amount of \$125,000 and placed a Mechanic's Lien on the property. The court denied the defendant's motion seeking to vacate the Mechanic's Lien on the grounds there is no question of fact the plaintiff is not entitled to any further sums and thus has no basis upon which to file such lien.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

There is no dispute that on December 4, 2018 Pilot walked off the job. In denying the motion to dismiss the Mechanic's Lien the court's previous decision noted there were questions of fact regarding the specific work left unfinished and the value of that work, thus no dismissal of the lien or any summary determination was possible. Upon reargument the defendant stresses that no such factual disputes exist. Indeed, the owner

presents undisputed evidence that the plaintiff was paid for all the work it performed, it left the job site and was owed no further money. The owner has submitted an affidavit from the general contractor, defendant Frost Contractors that Pilot had been paid for all the work it performed and that no lien is appropriate. In efforts to raise questions of fact the plaintiff argues such affidavit is undermined by "Frost's formal judicial admission that Pilot is owed for work on the project" (see, Affirmation in Opposition, page 2). No such formal admission exists raising questions of fact, rather, plaintiff argues that since Frost has defaulted in answering the Complaint such default constitutes an admission. However, that legal expedient whereby defaulted parties are deemed to admit the facts alleged in the complaint cannot raise questions of fact in the face of a specific, detailed and fully executed letter by Frost dated December 4, 2018 that Pilot has been paid in full and is owed no further money. In addition, on the same date Frost executed that letter the plaintiff executed a 'Partial Release and Lien Waiver' which acknowledged they were only owed \$5,000 and there is no dispute they were paid that amount. Thus, a general release by its very nature settles not only specific differences between the parties but all claims of every character, even those unknown, as long as they arose prior to the date of the release. The plaintiff argues the release was only 'partial' thus the claim

for \$125,000 still exists. However, to the extent the release states that only \$5,000 was owed any Mechanic's Lien filed for more than that amount was by definition an exaggeration. Thus, there are really no questions of fact compelling the court to maintain the lien and deny a summary determination.

The plaintiff argues there is a presumption funds from a Lien Law Trust have been diverted since the defendants have failed to respond to a request for documents. The case cited in support of that accusation, People v. Cahoon, 176 AD3d 1610, 110 NYS3d 179 [4th Dept., 2019] merely held the failure of a trustee to maintain the requisite books and records pursuant to Lien Law 75 is presumptive evidence of diversion of funds. In this case there is no evidence of any such failure, rather the defendants have not timely responded to the request. The reason they have not responded is precisely because they have moved seeking reargument which would render the request moot.

Thus, there are no issues of fact presented that Pilot is not owed any money for any work performed. Therefore, there are no issues that must be decided whether there was an exaggeration of the lien. Consequently, the motion seeking reargument is granted and upon reargument the lien is cancelled and summary judgement dismissing the entire complaint as to 145 Hunt LLC is granted. The plaintiff raises issues concerning the third count seeking replevin, however, the owner has represented any

materials owned by Pilot may be retrieved at any time. Thus, there are no issues of fact in this regard either and the motion seeking an order of replevin is denied.


Further, The plaintiff's motion seeking sanctions against 145 Hunt LLC is denied. Likewise, the motion seeking an order of reference concerning the amount due pursuant to the lien is consequently denied. The motion seeking to amend the complaint to add mortgagees that existed after the date Pilot left the work site is denied.

The motion seeking a default judgement against Frost Contractors Corp., is granted without opposition.

So ordered.

ENTER:

DATED: July 6, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC