

Matter of Bowery 260 Owner LLC (JC Contr. of Woodside Corp.)
2020 NY Slip Op 33113(U)
September 23, 2020
Supreme Court, New York County
Docket Number: 154452/2020
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**PRESENT: Hon. EILEEN A. RAKOWER**
*Justice***PART 6****In the Matter of the Application of
BOWERY 260 OWNER LLC,****To Cancel a Certain Mechanic's Lien
And a Bond Discharging the Same,
Under Lien Law §§ 17 and 19**

INDEX NO. 154452/2020

MOTION DATE

MOTION SEQ. NO. 1

MOTION CAL. NO.

Filed by**JC CONTRACTING OF WOODSIDE CORP.,****Lienor.**

The following papers, numbered 1 to _____ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answer — Affidavits — Exhibits _____

Replying Affidavits

**Cross-Motion: Yes No**

Petitioner Bowery 260 Owner LLC (“Petitioner”) moves pursuant to §§ 17 and 19 of the New York Lien Law (“Lien Law”) for an Order (1) cancelling the Lien filed by Respondent JC Contracting of Woodside Corp. (“Respondent” or “Lienor”) and bond; (2) discharging all parties from any liability or obligations thereunder; and (3) upon service of a copy of the Order upon the Office of the Clerk of the County of New York, directing the Clerk to effectuate the cancellation of the lien and bond, record the cancellation of the lien and bond on the lien docket, and provide Petitioner or its counsel with a certified copy of the documentation effectuating the cancellation. There is no opposition.

Relevant Background

According to the Petition, on or about March 7, 2019, Respondent filed a Notice of Mechanic’s Lien with the Clerk of the County of New York in the amount of \$150,000 (the “Lien”) against Petitioner and the property located at 258-260 Bowery, New York, New York 10012, Block 507, Lot 34 (the “Property”). On

August 26, 2019, the Lien was discharged via bond under N.Y. Lien Law § 19(4) in the amount of approximately \$165,000.00.

Petitioner asserts that “on or about November 15, 2016, Nexus Building Development Group, Inc. (‘Nexus’), the general contractor for a construction project taking place on the Property (the ‘60 Bowery Project’), retained Lienor pursuant to an AIA Standard Form Agreement to provide certain construction work, including certain foundation, excavation and superstructure for the 260 Bowery (the ‘260 Bowery Subcontract’).”

Petitioner contends full payment was paid to Nexus for the 260 Bowery Project, and on June 20, 2018 after the completion of work, Respondent provided an “Unconditional Waiver and Release on Final Payment” (the “Waiver”). The Waiver states the following:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Petitioner asserts that there has been no action taken by Lienor to foreclose on the Lien.

Discussion

“A mechanic’s lien is an incumbrance on realty.” *Perrin v. Stempinski Realty Corp.*, 15 AD2d 48, 49 [1st Dept 1961]. “It is essential that persons dealing with the owner should be able to ascertain with certainty and celerity just what claims against the property are in effect.” *Id.* “The short statute of limitations for filing is indicative of this purpose.” *Id.*

Lien Law § 10(1), states in relevant part:

Notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or, within eight months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished . . .

“It is elementary that a lien may be summarily discharged only for defects appearing on its face (Lien Law § 19, subd. [6]).” *Di-Com Corp. v. Active Fire Sprinkler Corp.*, 36 AD2d 20, 21 [1st Dept. 1971].

“Pursuant to statute, a mechanic’s lien is valid to the extent of ‘the sum earned and unpaid on the contract at the time of filing the notice of lien, and any sum subsequently earned thereon’. In the case of a subcontractor, the lien will only attach to those funds due and owing to the general contractor at the time of its filing, or which may thereafter become due and owing.” *Bunce v. Fahey*, 73 AD2d 632, 632 [2d Dept 1979] *see also Matros Automated Elec. Const. Corp. v. Libman*, 37 AD3d 313 [1st Dept 2007].

Here, Respondent filed the Notice of Mechanic’s Lien more than eight months after the completion of the contract. Moreover, full payment was paid to Nexus for the 260 Bowery Project, and on June 20, 2018 after the completion of work, Respondent provided the Waiver. *See Bunce*, 73 AD2d at 632. Respondent’s Notice of Mechanic’s Lien is therefore invalid because of its failure to comply with the provisions of N.Y. Lien Law § 19.

Wherefore, it is hereby

ORDERED that the Petition is granted without opposition; and it is further

ORDERED that the Notice of Mechanic’s Lien in the sum of \$150,000.00, filed by Respondent JC Contracting of Woodside Corp. on March 7, 2019, with the County Clerk of the County of New York against Petitioner Bowery 260 Owner LLC and the property located at 258-260 Bowery, New York, New York 10012, Block 507, Lot 34, and the bond issued by Petitioner Bowery 260 Owner LLC in the sum of \$165,000.00 on August 26, 2019, with the County Clerk of the County of New York are hereby vacated; and the and the County Clerk shall amend its records accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: September 23, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION