

Emerald Servs. Corp. v Empire Core Group LLC

2021 NY Slip Op 30394(U)

February 9, 2021

Supreme Court, New York County

Docket Number: 652744/2020

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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EMERALD SERVICES CORPORATION,

Plaintiff,

- v -

EMPIRE CORE GROUP LLC, ROYAL CHARTER
PROPERTIES EAST - LLC, ED 97 OWNER, LLC, HIGHLINE
22 LLC, 101 WEST END REIT LLC, JOHN DOE 1
THROUGH JOHN DOE 10, THE LAST NAME BEING
FICTITIOUS AND UNKNOWN TO THE PLAINTIFF,

Defendant.

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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, 26, 28, 29, 30, 31, 32, 33

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the decision on defendant, Empire Core Group, LLC's motion seeking to dismiss this action with prejudice based upon the expiration of plaintiff's mechanic's liens and plaintiff's cross-motion seeking an Order allowing plaintiff to file extensions of said mechanic's liens, *nunc pro tunc*.

On December 24, 2019, Emerald Services Corporation ("Emerald") filed four mechanic's liens against the following properties: (1) 1320 York Avenue, New York, New York, Block No. 1482, Lot No. 1; (2) 226-230 West 97th Street, New York, New York, Block No. 1868, Lot Nos. 40 and 44; (3) 503 West 22nd Street, New York, New York, Block No. 694, Lot Nos. 30, 31, and 32; and (4) 101 West End Avenue, New York, New York, Block No. 1171, Lot No. 62 (collectively, the "Liens"), and commenced the instant action to foreclose on said Liens by filing a summons and complaint on June 25, 2020. Emerald has not filed a Notice of Pendency for the Liens in this action or any other litigation and did not file for an extension of the Liens prior to

December 24, 2020. Based upon same, defendant seeks an Order dismissing the instant action for failure to state a cause of action and discharging the Liens pursuant to New York Lien Law § 17 on the ground that said Liens have expired by operation of law.

As discussed in *Aztec Window & Door Mfg., Inc. v. 71 Vill. Rd., LLC*, 60 A.D.3d 795, 796 (2d. Dept 2009) “Pursuant to Lien Law § 17, a mechanic's lien expires one year after filing unless an extension is filed with the County Clerk or an action is commenced to foreclose the lien within that time and a notice of pendency is filed in connection therewith (see *MCK Bldg. Assoc. v. St. Lawrence Univ.*, 5 A.D.3d 911, 912). In the event neither of these conditions is accomplished within the statutory period, nor is a further extension of the lien obtained by order of the court, the lien automatically expires by operation of law, becoming a nullity and requiring its discharge (see *Matter of Cook v. Carmen S. Pariso, Inc.*, 287 A.D.2d 208, 211).” As plaintiff did not complete either of said requirements during the statutory period, the Liens have expired by operation of law.

Plaintiff cross-moves seeking an Order allowing plaintiff to file extensions of said mechanic’s liens, *nunc pro tunc*. As discussed in *Aztec*, as plaintiff did not apply for extensions of the Liens within the statutory period, the expiration of same is automatic and this Court lacks the power, in its discretion, to grant plaintiff’s motion. Plaintiff further argues that they are entitled to a toll of the relevant statutory timeframes pursuant to Executive Order 202.8, which provides, “In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims

act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020." The Court notes that said Executive Order has been superseded by Executive Order 202.67, which provides "The suspension in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such date any such time limit will no longer be tolled."

As plaintiff filed the instant motion after November 3, 2020, its motion cannot be granted upon said grounds. The Court further notes that plaintiff filed the instant action on June 25, 2020 and failed to file a Notice of Pendency at that time. As such, plaintiff's arguments are without merit.

ORDERED that defendant's motion is GRANTED in its entirety and plaintiff's cross-motion is DENIED in its entirety; and it is further

ORDERED that plaintiff's First Cause of Action to foreclose on the mechanic's lien dated December 24, 2019 against the real property located at 1320 York Avenue, New York, New York, Block No. 1482, Lot No. 1, in the amount of \$50,330.00 is hereby dismissed, and the aforesaid mechanic's lien is vacated pursuant to New York Lien Law § 17 on the ground that said mechanic's lien has expired by operation of law; and it is further

ORDERED that plaintiff’s Second Cause of Action to foreclose on the mechanic’s lien dated December 24, 2019 against the real property located at 226-230 West 97th Street, New York, New York, Block No. 1868, Lot Nos. 40 and 44, in the amount of \$51,945.00 is hereby dismissed, the aforesaid mechanic’s lien is vacated and the bond posted by defendant Empire Core to discharge said mechanic’s lien, if any, is cancelled pursuant to New York Lien Law § 17 on the ground that said mechanic’s lien has expired by operation of law; and it is further

ORDERED that plaintiff’s Third Cause of Action to foreclose on the mechanic’s lien dated December 24, 2019 against the real property located at 503 West 22nd Street, New York, New York, Block No. 694, Lot Nos. 30, 31, and 32, in the amount of \$101,227.45 and the aforesaid mechanic’s lien is vacated pursuant to New York Lien Law § 17 on the ground that said mechanic’s lien has expired by operation of law; and it is further

ORDERED that plaintiff’s Fourth Cause of Action to foreclose on the mechanic’s lien dated December 24, 2019 against the real property located at 101 West End Avenue, New York, New York, Block No. 1171, Lot No. 62, in the amount of \$28,930.00, the aforesaid mechanic’s lien is vacated and the bond posted by defendant Empire Core to discharge said mechanic’s lien, if any, is cancelled pursuant to New York Lien Law § 17 on the ground that said mechanic’s lien has expired by operation of law.

2/9/2021
DATE


LAURENCE L. LOVE, J.S.C.

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

