World-Wide Plumbing Supply Inc. v Copper Servs. LLC
2021 NY Slip Op 31546(U)
May 5, 2021
Supreme Court, Kings County
Docket Number: 516148/19
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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WORLD-WIDE PLUMBING SUPPLY INC.,

Plaintiffs Decision and order

- against - Index No. 516148/19

COPPER SERVICES LLC, 24-16 QUEENS PLAZA OWNER LLC, 'JOHN DOE' and 'JANE DOE' 1-10, the names being fictitious as their true names are unknown and are intended to be the owners, officers, directors, shareholders, and/or members of Defendant 24-16 QUEENS PLAZA PROPERTY OWNER LLC,

Defendants, May 5, 2021

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PRESENT: HON. LEON RUCHELSMAN

The defendant 24-16 Queens Plaza Owner LLC has moved seeking to dismiss the complaint on the grounds it fails to state any cause of action. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

According to the complaint defendant Copper Services LLC purchased supplies from the plaintiff in the amount of $212,931.21 and never paid for those products. A default judgement was obtained against that party. The plaintiff has asserted two causes of action against the owner of the property defendant 24-16 Queens Plaza Owner LLC who has since sold the property, however, was the owner when those payments were due. The complaint asserts the owner of the property received the benefits of those materials and consequently must pay for them.

Thus, the complaint alleges unjust enrichment. Further, the complaint alleges the owner sold the property to another and the proceeds of such sale were trust funds which had to be utilized for unpaid construction expenses. This cause of action is for diversion of trust funds pursuant to the lien law. The defendant 24-16 Queens Plaza Owner LLC has now moved seeking to dismiss the complaint arguing those two causes of action do not state any claim.

Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR 3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

Lien Law §71(3)(a) states that an owner can be the trustee of funds for trust claims filed by "contractors, subcontractors, architects, engineers, surveyors, laborers and materialmen

arising out of the improvement, for which the owner is obligated" (id). The obligation on the part of the owner can either arise due to a contract between the owner and the supplier or subcontractor, or more likely, as the result of a valid mechanic's lien (Spectrum Painting Contractor's Inc., v. Kreisler, Borg, Florman General Contraction Company Inc., 64 AD3d 565, 883 NYS2d 262 [2d Dept., 2009]). Without either a contract or a mechanic's lien a supplier or subcontractor cannot have any claims against an owner of property. Thus, in Innovative Drywall Inc., v. Crown Plastering Corp., 224 AD2d 664, 638 NYS2d 722 [2d Dept., 1996] the court held that a subcontractor was not a beneficiary of an owner trust where the owner was never contractually obligated to that subcontractor and the mechanic's lien was declared defective. Again, in Quantum Corporate Funding Ltd., v. L.P.G. Associate Inc., 246 AD2d 320, 667 NYS2d 702 [1st Dept., 1998] the court noted that while the obligations of a contractor were "open to interpretation" an owner's responsibility under these provisions of the lien law "is settled" (id). Specifically, the court explained that an owner's liability can either be based upon a contract or upon a mechanic's lien. Citing earlier authority the court held that without either a contract or a mechanic's lien "merely supplying material which is used in the project cannot suffice to impose obligations on the owner under the statute" (id, see, also, Abjen

Properties L.P., v. Crystal Run Sand and Gravel Inc., 168 AD2d 783, 564 NYS2d 224 [3rd Dept., 1990]). Thus, in Avon Electrical Supplies Inc., v. C.K. Electric Inc., 297 AD2d 768, 747 NYS2d 575 [2d Dept., 2002] the court held that a supplier of materials had no standing to seek trusts from an owner.

The defendant asserts they are not "obligated" to pay the plaintiff since there is no contract between them. While it is true no such contract exists, clearly, that is not the only way in which an owner can be obligated to a supplier. Again, where a mechanic's lien is filed then the owner remains potentially liable, notwithstanding the lack of contractual privity between the parties (Weber v. Welch, 246 AD2d 782, 668 NYS2d 71 [3rd Dept., 1998]). However, any lien filed by a supplier or a subcontractor only creates claims as a trust beneficiary to the extent the owner has not (fully) paid the general contractor.

Thus, the next issue, then, that must be addressed is whether Copper Services LLC has been paid in full rendering any lien improper. The defendant asserts that Copper was paid in full at the time the property was sold. If true the owner had no further obligations to the contractor which could possibly flow to the plaintiff and this lawsuit cannot proceed. The plaintiff asserts that Copper was not paid in full because funds were withheld from Copper as retainage and there is no evidence those amounts were ever paid to Copper.

However, the defendant owner 24-16 Queens Plaza Owner LLC assigned all of its obligations to Silverback the new owner. Further, such assignment was with the consent of the construction manager the counter party to the contract with the owner. The plaintiff argues that "the fact that Owner assigned all its obligations and liabilities relating to the construction project does not relieve it of its obligations incurred at the time of the transfer. The Lien Law does not provide for the assignment of the trustee's obligations to the trust beneficiaries, and in contract law one can assign his contractual obligations but is not thereby relieved of the contractual duties" (Memorandum of Law in Opposition, page 9). First, the lien law does not prohibit the assignment that took place. More importantly, any liability the owner maintains toward the plaintiff is not contractual in nature but rather is solely based on the lien law. As noted, the lien law can only apply to the extent the owner still is obligated to make any payments. There is no question that the owner 24-16 Queens Plaza Owner LLC has been relieved of any further obligations. Consequently, the plaintiff cannot maintain any cause of action against 24-16 Queens Plaza Owner LLC and the motion seeking to dismiss the lawsuit is therefore granted. The plaintiff may pursue the claims noted against Silverback to the extent any funds are still owed to any party. Thus, any request to vacate or dismiss the mechanic's lien is

denied to afford the plaintiff that opportunity. In any event, all claims against 24-16 Queens Plaza Owner LLC are hereby dismissed.

So ordered.

ENTER:

DATED: May 5, 2021
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC