

King Steel Iron Work Corp. v SDS Leonard, LLC

2021 NY Slip Op 32579(U)

December 6, 2021

Supreme Court, Kings County

Docket Number: Index No. 512101/21

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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KING STEEL IRON WORK CORP.,

Plaintiff,

Decision and order

- against -

Index No. 512101/21

SDS LEONARD, LLC, 232 SMITH STREET
LLC, ABC COMPANIES 1-100 (fictitious
entities), & JOHN DOES 1-100 (fictitious
persons);

Defendants,

December 6, 2021

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PRESENT: HON. LEON RUCHELSMAN

The defendant has moved seeking to dismiss the seventeenth affirmative defense and second counterclaim alleging slander of title. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff, a contractor, was hired by defendant SDS Leonard to perform construction work at 232 Smith Street in Kings County. On May 6, 2021 the plaintiff filed a Mechanic's Lien alleging they are owed \$429,693.59 for work performed that remains unpaid. The plaintiff instituted the instant lawsuit alleging causes of action for breach of contract, unjust enrichment and violations of the Lien Law. The defendants answered and served affirmative defenses and counterclaims. Specifically, the defendants asserted the plaintiff has exaggerated the amount owed and that "the wrongful filing of the mechanic's lien casts a cloud upon Defendants' title to or interest in realty" (see, Answer, ¶ 73) and asserted a claim of

slander of title. The plaintiff has now moved seeking to dismiss that counterclaim on the grounds it fails to allege any such cause of action.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1st Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdiarian v. Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

There are no cases in New York that expressly permit asserting a cause of action for slander of title based upon the filing of an exaggerated Mechanic's Lien. The defendants cite two cases supporting the viability of such a cause of action. The first, Cnb Constructor Corp., v. Gs Utah Wind Acquisition LLC, (2020 NY Misc. LEXIS 13808 [Supreme Court Westchester County 2020]) does deal with seeking to dismiss exaggerated liens, however, it does not mention the claim of slander of title at all. The second, Flowcon Inc., v. Andiva LLC, (2021 NY Misc. LEXIS 395 [Supreme Court New York County 2021]) did note a party asserted slander of title as a potential cause of action based upon a exaggerated lien. However, the court did not address the

merits of that cause of action at all. Indeed, the issues in that case were whether the parties were bound by an arbitration clause. Recently, on December 2, 2021, after this motion was submitted, the Appellate Division reversed the lower court decision and held all matters were subject to arbitration (Flowcon Inc., v. Andiva LLC, _AD3d_, _NYS3d_ [1st Dept., 2021]).

Thus, that case cannot support the assertion that a slander of title claim is proper when challenging an improper lien.

Moreover, cases that have actually examined the issue have uniformly rejected the idea that a slander of title claim is proper when challenging an improper and exaggerated lien. In Seidman v. Industrial Recycling Properties Inc., 83 AD3d 1040, 922 NYS2d 451 [2d Dept., 2011]) the court held that no such cause of action exists in New York for a claim for slander of title based upon the filing of a notice of pendency.¹ Again, in Neptune Estates, LLC, v. Big Poll & Son Construction LLC, 39 Misc3d 649, 961 NYS2d 896 [Supreme Court Kings County 2013] the court specifically stated that slander of title is not a valid cause of action challenging a Mechanic's Lien because a Mechanic's Lien does not cast any doubt upon the validity of an owner's title. It is true that case listed seven causes of action that one could pursue upon a false Mechanic's Lien. The


¹ In other states a party may pursue a slander of title claim based on the malicious filing of a Notice of Pendency. See, Carrozza v. Voccola, 90 A3d 142 [Supreme Court of Rhode Island 2014].

court noted that "a number of common law remedies are available to a property owner where damages result from the wilful exaggeration of a lien. For example, a lienor that wilfully exaggerated a lien may be liable for: (1) fraud; (2) disparagement (sometimes called slander of title); (3) interference with contract (to extent such lien interferes with existing contracts); (4) interference with prospective business advantage (to extent such lien interferes with potential deals); (5) extortion; (6) malicious prosecution; and (7) malicious abuse of process'" (id). The reference to disparagement "sometimes called slander of title" is a different tort not implicated in this case. Therefore, since slander of title cannot be pursued based upon the facts of this case the motion seeking summary judgement dismissing that counterclaim and affirmative defense is granted.

So ordered.

ENTER:

DATED: December 6, 2021
Brooklyn N.Y.



Hon. Leon Richelsman
JSC