

John Michael Elec. Contr. Corp. v Racanelli Constr. Co. Inc.
2021 NY Slip Op 32767(U)
December 22, 2021
Supreme Court, Kings County
Docket Number: Index No. 504741/2021
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22nd day of December 2021

HONORABLE FRANCOIS A. RIVERA

-----X
JOHN MICHAEL ELECTRIC CONTRACTING CORP.,

Plaintiff,

- against-

RACANELLI CONSTRUCTION COMPANY INC.,
MICHAEL RACANELLI, PS NORTHEAST, LLC,
SUNSET PARK STORAGE, LLC,
LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.
-----X

DECISION & ORDER

Index No. 504741/2021

Oral Argument: 11-9-21

Cal. No. 4, MS 1

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 were read on this motion to dismiss.

Upon the foregoing documents, and after oral argument before the Court on November 9, 2021, at which time counsel for Plaintiff JOHN MICHAEL ELECTRIC CONTRACTING CORP. and counsel for Defendants RACANELLI CONSTRUCTION COMPANY INC., MICHAEL RACANELLI, PS NORTHEAST, LLC, SUNSET PARK STORAGE, LLC, and LIBERTY MUTUAL INSURANCE COMPANY (“the Defendants”) made their arguments and presentations, the motion of the Defendants, is *partially granted*, in accordance with the following decision.

Said Defendants seek an order pursuant to CPLR 3211(a)(1), (3) and (7), as follows:

- A. dismissing the complaint in its entirety as against defendants, PS Northeast LLC and Sunset Park Storage, LLC;

B. dismissing the first, fourth, sixth, seventh, and eighth causes of action in the complaint as against defendants, Sunset Park Storage, LLC, Racanelli Construction Company, Inc.,

Michael Racanelli and Liberty Mutual Insurance Company, and

C. granting defendants such further relief as the Court deems just and proper, including costs and disbursements.

With respect to the Plaintiff's first cause of action for the foreclosure of a mechanic's lien, there is no dispute the said mechanic's lien was bonded by the Defendant Liberty Mutual Insurance Company, Bond No. 015205809.

Therefore, the prior owner of the property foreclosed upon, more specifically SUNSET PARK STORAGE, LLC, and the current owner of the property, PS NORTHEAST LLC, are not necessary parties to this lawsuit. Lien Law § 19(4) expressly provides that a mechanic's lien may be discharged from real property by serving and filing a mechanic's lien discharge bond. Thus, when a discharge bond is substituted for a mechanic's lien, as in the instant action, the lien is thereby discharged and there no longer exists any claim against the real property. *Tri-City Elec. Co., Inc. v. People*, 96 A.D.2d 146, 150, 468 N.Y.S.2d 283, 286-287 (4th Dept. 1983) ("upon the posting of the various bonds, a 'shifting' occurs and the lien detaches from its original adherence (appropriated funds or property) and attaches to the substitute, the bond"), *aff'd*, 63 N.Y.2d 969, 483 N.Y.S.2d 990 (1984); see also, *Norden Electric, Inc. v. Ideal Electric Supply Corp.*, 154 A.D. 2d 580, 581 546 N.Y.S.2d 409, 411 (2d Dept. 1989). Indeed, when a bond is filed to discharge a mechanic's lien pursuant to Lien Law § 19(4), the owner of the real property subject to the lien is not a necessary or proper party to an action to foreclose the mechanic's lien against the bond. Lien Law § 44-b; see also, *Bryant Equip. Corp. v. A-1 Moore Contr. Corp.*, 51 A.D.2d 792, 793, 380 N.Y.S.2d 705, 706 (2d Dept. 1976).

Accordingly, the first cause of action is dismissed as against the Defendants SUNSET PARK STORAGE, LLC and PS NORTHEAST LLC.

With respect to the Plaintiff's fourth cause of action for unjust enrichment, Defendant SUNSET PARK STORAGE, LLC seeks dismissal because there is no legally cognizable claim for unjust enrichment against it as a matter of law because the contract was with the general contractor. *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y. 2d 382, 388, 516 N.E.2d 190, 193, 521 N.Y.S.2d 653, 656 (1987); *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 140, 907 N.E.2d 268, 274, 879 N.Y.S.2d 335, 361 (2009) (holding that complaint failed to state a cause of action for quasi contract); *Lum v. New Century Mortgage Corp.*, 19 A.D.3d 558, 559- 560, 800 N.Y.S.2d 408, 410 (2d Dept. 2005); *Perma Pave Contracting Corp.*, 156 A.D.2d 550, 551, 549 N.Y.S.2d 57, 58-59 (2d Dept. 1989); *Contelmo's Sand & Gravel, Inc. v. J & J Milano, Inc.*, 96 A.D.2d 1090, 1091, 467 N.Y.S.2d 55, 57 - 58 (2d Dept. 1983).

Accordingly, the fourth cause of action is dismissed as against the Defendant SUNSET PARK STORAGE, LLC.

With respect to the Plaintiff's sixth cause of action for fraud against the individual Michael Racanelli, the Defendant's application to dismiss this cause of action is denied. Plaintiff may have relied to its detriment upon representations made by Mr. Racanelli, and this is for the trier of fact to determine.

With respect to the Plaintiff's seventh cause of action under the NY Lien Law Article 3-A, involving constructive trusts, the court has determined that this cause of action and the relief sought applies to only the Defendants RACANELLI CONSTRUCTION COMPANY INC. and MICHAEL RACANELLI.

With respect to the Plaintiff's eighth cause of action for attorney's fees, this cause of action is dismissed because it cannot be brought as a "stand-alone" cause of action as there is no provision or clause for attorney's fees in the contract. However, the Plaintiff may present to the court a claim for attorney's fees with proof of such entitlement when presenting evidence at trial, or in appropriate motion practice.

Accordingly, it is

ORDERED that Plaintiff's first cause of action is dismissed as against the Defendants SUNSET PARK STORAGE, LLC and PS NORTHEAST LLC; and it is further

ORDERED that Plaintiff's fourth cause of action is dismissed as against the Defendant SUNSET PARK STORAGE, LLC; and it is further

ORDERED that the Defendants' application to dismiss the Plaintiff's sixth cause of action is denied; and it is further

ORDERED that Plaintiff's seventh cause of action is determined to be against only the Defendants RACANELLI CONSTRUCTION COMPANY INC. and MICHAEL RACANELLI; and it is further

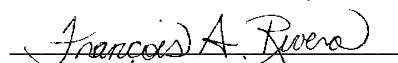
ORDERED that Plaintiff's eighth cause of action is dismissed; and it is further

ORDERED that the remaining causes of action shall continue forthwith; and it is further

ORDERED that within thirty (30) days of filing a Notice of Entry of this Order by e-filing with the NYSCEF System, the Defendants shall file an Answer to the Amended Complaint, NYSCEF Doc #4.

This shall constitute the Decision and Order of the court.

ENTER:


J.S.C.