

Bolt Design, LLC v Ipanema Rest.

2023 NY Slip Op 33140(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 161168/2022

Judge: Lucy Billings

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

-----x
BOLT DESIGN, LLC,

Index No. 161168/2022

Plaintiff

- against -

DECISION AND ORDER

IPANEMA RESTAURANT, CENTURY 3W36-FLO
LLC, CENTURY 3W36-MRC LLC, CENTURY
3W36-SAT LLC, CENTURY 3W36-AT LLC,
CENTURY 3W36-STT LLC, and CENTURY
DEVELOPMENT PROPERTIES, LLC,

Defendants
-----x

LUCY BILLINGS, J.S.C.:

Defendant Ipanema Restaurant, the tenant at 3 West 36th Street, New York County, the premises on which plaintiff seeks to enforce its mechanic's lien filed January 31, 2023, moves to dismiss plaintiff's first claim for foreclosure of the lien based on res judicata. C.P.L.R. § 3211(a)(5). Plaintiff does not dispute that this court (Engoron, J.) in an order entered January 13, 2023, in a prior proceeding, discharged with prejudice plaintiff's lien filed August 19, 2022, for the same work at the same premises. Plaintiff never moved to vacate or modify that order.

As the authority on which plaintiff relies instructs, if it seeks to enforce a successive lien in place of the lien discharged with prejudice in the prior proceeding, its remedy was

to seek a vacatur, modification, or reversal of Justice Engoron's order, at least to the extent it discharged the first lien with prejudice, and to claim based on the successive lien in that proceeding. Red Hook 160, LLC v. 2M Mech., LLC, 203 A.D.3d 932, 933 (2d Dep't 2022). "While a subcontractor may have the right to file a second mechanic's lien within the statutory time period, at least to cure an irregularity in a lien first filed . . . , a second mechanic's lien is not immune from the doctrine of res judicata." County Wide Flooring Corp. v. Town of Huntington, 173 A.D.3d 678, 680 (2d Dep't 2019). Plaintiff's authority, Red Hook 160, LLC v. 2M Mech., LLC, 203 A.D.3d at 933, did not overrule that principle.

Justice Engoron's order discharging the first lien with prejudice is res judicata precluding plaintiff's claim to foreclose its successive lien here. County Wide Flooring Corp. v. Town of Huntington, 173 A.D.3d at 681. In Red Hook 160, LLC v. 2M Mech., LLC, 203 A.D.3d at 933, the court was empowered to reverse the discharge of the first lien to allow the successive lien, whereas this court lacks any such authority in this action.

Although plaintiff distinguishes its first lien as not discharged on the merits, it was discharged not only with prejudice, but also because it was unsupported by an itemized statement to which the lienor was entitled. N.Y. Lien Law § 38. Even if the failure to provide an itemized statement after an

opportunity to comply may be considered an "irregularity," this noncompliance with the governing statute is not a mere technicality. County Wide Flooring Corp. v. Town of Huntington, 173 A.D.3d at 680.

Ipanema Restaurant also seeks sanctions against plaintiff for instituting its claim to foreclose on its successive mechanic's lien. 22 N.Y.C.R.R. § 130-1.1. Given that a contractor is entitled to file a second lien to cure an irregularity in the first lien as long as the second lien is still timely, N.Y. Lien Law § 10; Red Hook 160, LLC v. 2M Mech., LLC, 203 A.D.3d at 933; Munoz Trucking Corp. v. Darcon Constr., Inc., 153 A.D.3d 838, 839 (2d Dep't 2017), plaintiff raised a genuine dispute concerning the applicable authority, but failed to appreciate that the authority on which plaintiff relied did not involve a res judicata bar as the claim involves. 22 N.Y.C.R.R. § 130-1.1(c); Bradley v. Bradley, 167 A.D.3d 489, 489-90 (1st Dep't 2019); Korangy v. Malone, 161 A.D.3d 645, 646 (1st Dep't 2018); Curtis v. Tabak Is Tribeca, LLC, 144 A.D.3d 509, 509-10 (1st Dep't 2016); Gordon Group Invs., LLC v. Kugler, 127 A.D.3d 592, 594 (1st Dep't 2015).

For the reasons explained above, the court grants defendant Ipanema Restaurant's motion to dismiss plaintiff's first claim for foreclosure of its mechanic's lien filed January 21, 2023, C.P.L.R. § 3211(a)(5), unless plaintiff satisfies the following

conditions. Plaintiff, within 30 days after entry of this order, must move to vacate or modify the order entered January 13, 2023, in this court (Engoron, J.) under Index No. 158091/2020 and, ultimately, must succeed in vacating or modifying that order to permit plaintiff's successive lien. C.P.L.R. § 5015(a)(1). The court denies defendant Ipanema Restaurant's motion for sanctions. 22 N.Y.C.R.R. § 130-1.1(c).

DATED: September 7, 2023.



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.