Liu v Carrion

2023 NY Slip Op 33260(U)

September 8, 2023

Supreme Court, Kings County

Docket Number: Index No. 520515/2022

Judge: Patria Frias-Colón

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 25

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David Liu and Heidi Liu,

PLAINTIFFS,

-against-

Adolfo Carrion, Jr., in his official capacity as Commissioner of the New York City Department of Housing Preservation and Development, and the New York City Department of Housing Preservation and Development,

DEFENDANTS.

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Index # 520515/2022
Cal. # 22 Mot. Seq. # 1

DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and/or 3212 of the papers reviewed on this Motion:
NYSCEF Doc. #s 34-45 by Defendants
NYSCEF Doc #s 46–56 Plaintiffs' Opposition
NYSCEF Doc. # 57 Defendants' Reply

Upon the foregoing cited papers and oral argument on March 15, 2023, pursuant to CPLR § 3211(a)(7), Defendants Commissioner Adolfo Carrion in his official capacity and the New York City Department of Housing Preservation and Development's ("HPD") motion to dismiss is GRANTED for failing to state a cause of action.

PROCEDURAL HISTORY

On March 8, 2017, the New York City Department of Buildings ("DOB") issued Peremptory Vacate Order No. 474/17 ("Vacate Order") for the third floor of 5212 7th Avenue, Brooklyn, New York ("Subject Premises"), which stated there was "imminent danger to life or public safety or safety of the occupants or to property, in that Full height partitions erected along with plumbing and electrical work performed creating six SRO's (single residence occupancy) with inadequate light, insufficient ventilation and no secondary means of egress. These hazardous conditions have rendered the 3rd floor unsafe to occupy." *See* NYSCEF Doc. # 35.

Said Vacate Order further noticed "This vacate order may cause a debt and lien to be filed against the property pursuant to §§ 27-2144, 26-305, and/or 28-215.1 of the Administrative Code of the City of New York. *See id*. The DOB rescinded the Vacate Order on May 30, 2017. *See id.*

Defendants aver that the Vacate Order required them to provide relocation services for the period March 9, 2017 to November 6, 2019 for one tenant at the Subject Premises who applied for HPD emergency relocation services. *See id*. Pursuant to Admin. Code § 26-305[1] HPD filed a Notice of Lien on October 7, 2020 against the Subject Premises seeking reimbursement for relocation costs of

[1]Admin. Code § 26-305 states, in relevant part, "[w]henever the department of housing preservation and development has incurred expenses in providing relocation services, including, but not limited to, expenses incurred in the provision of temporary housing, for tenants…, the department shall be entitled to reimbursement of such expenses from the owner of the building from which such tenants were relocated…."

$73,287.89, covering the period March 9, 2017 to November 6, 2019. *See id*. The Notice of Lien contained the name and address of the lienor, the name of the owner of the Subject Premises, the authority by which HPD incurred the expenses, the relocation services provided for which HPD sought reimbursement, the amount unpaid to the lienor, the time when the first and last items of work were performed, and a description of the property subject to the lien. *See* NYSCEF Doc. #s 41 and 35.

On July 19, 2022, Plaintiffs filed a Summons and Complaint seeking, *inter alia*, a declaration that the individual relocated by Defendants was not a "tenant" within the meaning of Admin. Code § 26-305 and therefore Defendants did not have the legal authority to impose a lien on the Subject Premises. *See id*.; NYSCEF Doc. # 1 (Summons and Complaint).

PARTIES' POSITIONS

Defendants state that a property owner may seek to discharge a mechanic's lien[2] by obtaining summary discharge of the lien if it is invalid facially or by forcing a foreclosure trial by demanding the commencement of an action to enforce the lien. Defendants claim Plaintiffs are procedurally improperly attempting to discharge the lien summarily because Plaintiffs have not stated a claim that HPD's relocation lien is facially invalid, nor have they filed a demand against Defendants to commence a foreclosure action to challenge the lien or challenge whether the relocated tenant was in fact a "tenant" under Admin. Code § 26-305.[3]

In support of their position that the discharged of a relocation lien is only available in limited circumstances, Defendants cite *Rivera v. Dep't of Hous. Preserv. & Dev. of the City of N.Y.* for the principle that "[s]ummary discharge addresses only the facial validity of the notice of the lien and leaves disputes regarding the claimed expenses in the underlying liens to be resolved at a foreclosure hearing or trial." 29 N.Y.3d 45, 51, 54 (2017). Defendants further claim that *Rivera* holds that a lien can be facially invalid only when it either includes non-lienable expenses or does not include information required by Lien Law § 9,[4] or has not been filed properly. *See id.* at 51. Defendants argue that the

[2]New York Lien Law § 3 defines a mechanics lien as one wherein a contractor who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner "shall have a lien for the principal and interest, of the value, or the agreed price, of such labor…or materials upon the real property improved or to be improved and upon such improvement, from the time of filing a notice of such lien." *NGU, Inc. v. City of New York*, 189 A.D.3d 850, 852 (2nd Dep't 2020); *see generally Van Stone v. Stillwell & Bierce Mfg. Co.*, 142 U.S. 128 (1891) (defining a mechanic's lien as a claim for the purpose of securing a priority of payment of the price and value of work performed and materials furnished therein in repairing a building).

[3]Defendants point out that, effective September 14, 2021, Admin. Code § 26-305 was amended in part. Specifically, § 26-305 prescribes the rules regarding how HPD handles expenses related to relocating tenants. It was amended to delineate between mechanics liens and tax liens. Prior to September 14, 2021, any expenses arising from vacate orders constituted a lien and were "governed by the provisions of law regulating mechanics liens and by the provisions of Admin. Code § 26-305(1), (2) and (3)." Now, any expenses arising from vacate orders issued after September 14, 2021, "shall constitute a debt recoverable from the owner of the building at which the vacate order was issued with the effect and enforcement of such debt governed by paragraph (d) of this subdivision," is entitled "Tax lien." *See* Admin. Code § 26-305(4) (d). However, as the Vacate Order herein was issued on March 8, 2017, Admin. Code § 26-305(1), (2) and (3) continue to govern.

[4]Lien Law § 9 states in part, "[t]he notice of lien shall state: The name and residence of the lienor…[t]he name of the owner of the real property against whose interest therein a lien is claimed…[t]he labor performed or materials

Verified Complaint in the instant case must be dismissed because Plaintiffs failed to allege that the Notice of Lien includes only non-lienable expenses, does not include the information required by Lien Law § 9.

As to Plaintiffs' claim that the relocatee was not a "tenant" under the law, Defendants argue that this claim is premature as it should be resolved at the foreclosure trial stage. *See id*. at 49; *see also Aaron v. Great Bay Contr., Inc.*, 290 A.D.2d 326 (1st Dep't 2002) (application to discharge mechanic's lien properly denied because it did not appear from face of lien that it was invalid by reason of the labor or materials furnished or for any other reason under N.Y. Lien Law § 19 but was rather a dispute as to whether the work was completed, which could not be decided until foreclosure trial).

Plaintiffs claim that summary discharge of the lien was warranted because of Defendants' repeated failure, even upon Plaintiff's Freedom of Information Law requests, to provide Plaintiffs "with information including the names of squatters, trespassers or others…", thereby preventing Plaintiffs from investigating whether the individual was really their tenant. *See* NYSCEF Doc. # 46. Plaintiffs argue that since Defendants clearly had the alleged tenant's name for several years as a result of requiring that information from the alleged tenant pursuant to Section 18-01(b) of HPD's "Relocation Payments and Service", Defendants demonstrated gamesmanship and bad-faith by only disclosing the identity in the course of Defendants' seeking dismissal of Plaintiff's complaint and Defendants should not be allowed to "have it both ways" or "have their cake and eat it too." *See id*. at pages 9-10 (*citing* NYSCEF Doc. #s 40 and 55).

DISCUSSION

A court does not have inherent power to vacate or discharge a notice of lien except as authorized by the Lien Law.[5] *See Matter of Matrix Staten Is. Dev., LLC v. BKS-NY, LLC*, 204 A.D.3d 1004, 1005 (2nd Dep't 2022) (reversing Supreme Court for summarily discharging mechanic's lien as it was "facially valid"); *Matter of Northside Tower Realty, LLC v. Klin Const. Group, Inc.*, 73 A.D.3d 1072 (2nd Dep't 2010). The *Northside Tower* Court held that since there was no defect upon the face of the notice of lien, any dispute regarding its validity had to await the foreclosure trial and thus the Supreme Court erred in discharging the lien summarily. *See id*. at 1072; see also *Matter of Old Post Rd. Assoc., LLC v. LRC Const., LLC*, 177 A.D.3d 658 (2nd Dep't 2019) (petition to discharge mechanic's lien summarily denied properly because dispute needed to be resolved at lien foreclosure trial). In *Old Post Rd. Assoc*., the petitioner alleged that respondent's mechanic's lien was invalid on its face since the preconstruction services provided by respondent could not form the basis of a mechanic's lien. *See* 177 A.D.3d at 659. The *Old Post Rd. Assoc*. Court disagreed with petitioner, finding that respondent argued that the work it performed for petitioner could qualify as the type of work that would be subject to a mechanic's lien and must be resolved at a lien foreclosure trial as opposed to a summary discharge. *See id*. at 660. In

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furnished…[t]he time when the first and last items of work were performed…[t]he property subject to the lien…whether the property subject to the lien is…improved with a single family dwelling or…[and] must be verified by the lienor or his agent…."

[5]"Lien Law § 19(6) provides, with respect to a mechanic's lien for a private improvement, that a court may summarily discharge of record the alleged lien when 'the notice of lien is invalid by reason of failure to comply with the provisions of' Lien Law § 9." 204 A.D.3d at 1005 (quoting *Matter of Malbro Const. Servs., Inc. v. Straightedge Bldrs.*, Inc., 188 A.D.3d 1068, 1068 [2nd Dep't 2020]).

Matter of Matrix Staten Is. Dev, in reversing the trial court's summary discharge of a mechanic's lien, the Second Department found that the lien identified real property subject to the lien, the alleged owners of the property and the amounts allegedly due for unreimbursed material and labor and, to the extent there were any flaws in it, the lien's "substantial compliance" with the Lien Law was sufficient to establish its validity. *See id.* at 1004-1005.

This Court agrees that the Notice of Lien included the necessary information required by the Lien Law and therefor is facially valid, leaving no basis to summarily discharge it. *See Rivera v. Dep't of Hous. Preserv. & Dev. of the City of N.Y.*, 29 N.Y.3d 45; Admin. Code § 26-305; Lien Law § 9. Further, Plaintiffs cannot provide support for their claim that the omission of the name of the alleged tenant renders the lien invalid prior to the foreclosure trial. Plaintiffs have not refuted the principles cited by *Rivera*, other caselaw and statutes cited above, and accordingly have not raised a claim that can be addressed by this Court at this time.

This constitutes the Decision and Order of the Court.

Date: September 8, 2023
Brooklyn, New York

Hon. Patria Frias-Colón, J.S.C.