

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - March 15, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2009-10338

DECISION & ORDER

In the Matter of 29-32 LLC, appellant, v Neptune Contracting & Environmental, Inc., respondent.

(Index No. 1747/09)

Agovino & Asselta, LLP, Mineola, N.Y. (Peter L. Agovino and Parshhueram T. Misir of counsel), for appellant.

Law Offices of Michael P. Giampilis, P.C., Mineola, N.Y., for respondent.

In a proceeding pursuant to Lien Law § 38, the petitioner appeals from an order of the Supreme Court, Queens County (Satterfield, J.), entered October 8, 2009, which denied its motion to cancel the mechanic's lien.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the petitioner's motion to cancel the subject mechanic's lien (*see* Lien Law § 38; *see generally* *J. Sackaris & Sons, Inc. v Terra Firma Constr. Mgt. & Gen. Contr., LLC*, 14 AD3d 538, 541). Here, as noted by the Supreme Court, there is an action currently pending in the Supreme Court, Queens County, entitled *Neptune Contracting & Environmental, Inc. v 2932 LLC*, under Index No. 27444/08, in which the respondent herein interposed, inter alia, a cause of action to foreclose on the same mechanic's lien involved in the instant proceeding. Under these circumstances, we agree with the Supreme Court that

cancellation of the lien is not warranted at this juncture. We note that our determination is without prejudice to either party raising issues regarding the lien in the pending action.

RIVERA, J.P., ANGIOLILLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court