

**Matter of Eden Ballroom, LLC v Maspeth Contr.
Corp.**

2016 NY Slip Op 31902(U)

October 5, 2016

Supreme Court, New York County

Docket Number: 150730/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 2**

In the Matter of the Application of

EDEN BALLROOM, LLC,

Petitioner,

-against-

to cancel the Notice of Mechanic's Lien filed by

MASPETH CONTRACTING CORP. d/b/a MASPETH
ROOFING & SIDING,

Respondent.

**DECISION, ORDER &
JUDGMENT**
Index No. 150730/2016
Mot. Seq. Nos. 001 and 002

KATHRYN E. FREED, J.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION:

MOTION SEQUENCE 001

PAPERS	NUMBERED ¹
PETITION AND EXHIBITS ANNEXED.....	1-3
ORDER TO SHOW CAUSE, AFF. IN SUPP. AND EXHIBITS ANNEXED.....	74, 67-72

MOTION SEQUENCE 002

PAPERS	NUMBERED
ORDER TO SHOW CAUSE, AFF. IN SUPP., MEMORANDUM OF LAW IN SUPP.....	84, 81-82
AFF. IN OPP. AND EXHIBITS ANNEXED.....	86-91
REPLY AFF.....	92

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

¹ Unless otherwise indicated, the papers are numbered herein according to the document numbers assigned to them by the New York State Courts Electronic Filing System (NYSCEF).

In this special proceeding to cancel a notice of mechanic's lien, commenced by petition and order to show cause (motion seq. No. 1), respondent moves, by order to show cause, to dismiss the petition on the ground that petitioner lacks standing (motion seq. No. 2). The parties submit written opposition. After oral argument, a review of the papers submitted and relevant statutes and case law, **respondent's motion to dismiss is granted, the petition is denied and the proceeding is dismissed.**

BACKGROUND AND PROCEDURAL HISTORY

According to the petition, in October 2015, petitioner was the lessee of real property located at 637 West 50th Street, New York, New York, shown on the New York County Land Map as 01098, Lot 0011. (Doc. No. 1.) Citigrant Funding Corp. was and is the owner of the property. Petitioner maintains that it hired G Builders, LLC as a contractor to renovate the property for use as a nightclub. It further contends that G Builders hired respondent Maspeth Contracting Corp. as a roofing subcontractor on the project. On October 20, 2015, respondent filed a mechanic's lien in the amount of \$109,500, against Citigrant Funding Corp., G Builders and New York Community Bank, as mortgagee. (Doc. No. 2.) Petitioner was not named in the notice.

In January 2016, petitioner commenced this action to cancel the lien, by petition and order to show cause (motion seq. No. 1.) Respondent moves, by order to show cause, to dismiss the petition on the ground that petitioner lacks standing (motion seq. No. 2.)

POSITIONS OF THE PARTIES

Petitioner maintains that, since respondent failed to give it proper notice of the mechanic's lien, it is entitled to have it canceled. Petitioner argues that it was entitled to such notice since the

Lien Law's definition of "owner" includes a lessee for a term of years. *See* Lien Law § 2 (3).

Respondent contends that the Lien Law places no affirmative obligation to provide notice to every individual who may be considered an owner of a property. It argues that such a rule would be untenable, and that the party with a right to file a notice of mechanic's lien has the right to choose which entity it would like to claim the lien against. It continues that, having chosen the fee owner of the building (namely, Citigrant Funding Corp.), as the entity against which the lien would be asserted, Citigrant was the only entity entitled to notice, and the only entity that may commence a proceeding to cancel it.

CONCLUSIONS OF LAW

Lien Law § 3 provides, in pertinent part, that "[a] . . . subcontractor . . . who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof, or of his agent, contractor or subcontractor . . . shall have a lien for the principal and interest, of the value, or the agreed price, of such labor . . . from the time of filing a notice of such lien." The notice of lien must contain, among other things, "[t]he name of the owner of the real property against whose interest therein a lien is claimed, and the interest of the owner as far as known to the lienor." Lien Law § 9 (2). The statute defines the term "owner" to include, among others, "the owner in fee of real property, or of a less estate therein, [and] a lessee for a term of years." Lien Law § 2 (3).

The statute's broad definition of the term "owner" does not imply that a lien must be sought against each and every entity or individual that may fit the definition if any lien is to be sought at all. Any other conclusion would lead to the untenable result that a contractor seeking a mechanic's lien would have to provide notice of the lien to each and every tenant in a building, regardless of the size

of the building and the difficulty which would necessarily arise in discerning who those individuals are. There is neither legal support nor a good public policy reason to require such an onerous undertaking. As petitioner is not named in the notice of lien, the lien in no way implicates its ownership interest, and petitioner therefore lacks standing to seek its cancellation. *See Newman v Valmar Elec. Co.*, 9 Misc 3d 450, 454 (Sup Ct, NY County 2005); *compare Matter of Abbott*, 14 Misc 3d 983, 984 (Sup Ct, NY County 2007).

Accordingly, it is hereby:

ORDERED that respondent's motion to dismiss the petition (motion sequence No. 2) is granted; and it is further

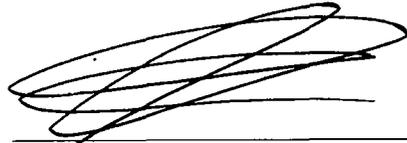
ORDERED that petitioner's motion (motion sequence No. 1) is denied; and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

ORDERED that this constitutes the decision, order and judgment of the court.

DATED: October 5, 2016

ENTER:


KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT