

651923 18 Ave LLC v Glory R Constr. Inc.

2025 NY Slip Op 31108(U)

March 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 527796/2024

Judge: Aaron D. Maslow

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

At an I.A.S. Trial Term, Part 2, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 320 Jay Street, Borough of Brooklyn, City and State of New York, on

March 28, 2025

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651923 18 AVE LLC and AE & LY HOLDINGS, LLC,

Index No. 527796/2024

MS1

Petitioners,

ORDER

-against-

GLORY R CONSTRUCTION INC.,

Cal. Date 3/28/25

Respondent.

Cal. ~~Date~~ No. 21

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN.

Petitioners, 651923 18 AVE LLC and AE & LY HOLDINGS, LLC, are seeking an order, pursuant to New York Lien Law § 38, compelling respondent, GLORY R CONSTRUCTION INC. ("Glory R"), to furnish a verified itemized statement in compliance with Lien Law § 38 in receipt of said order and providing that upon respondent's failure to furnish such an itemized statement, issue an order cancelling and discharging the Mechanic's Lien and the Bond filed to discharge said lien pursuant to Lien Law § 19(4). For the reasons set forth below, the Verified Petition is granted in part.

Petitioners are the owners of the real property located at 1807 66th Street, also known as 6519-6523 18th Avenue, Brooklyn, New York, Block 5554, Lot 1 ("Property"). On or around November 20, 2023, Glory R was hired by petitioners' construction manager, New York H & Y Construction Inc. ("H & Y").

On September 9, 2024, respondent filed a mechanic's lien ("Lien") against the property in the amount of \$150,000.00. The Notice of Lien indicates that the property is owned by petitioners, the respondent was employed by and contracted with H & Y, and that the labor furnished was

“installation of pipe, drainage materials, etc.” The Notice also indicates that the first item of work was performed on March 1, 2024, and the last item of material was furnished on May 31, 2024 ~~June 30, 2024~~. Finally, the Lien states that said labor was furnished for and used in the improvement of the real property described therein.

On September 19, 2024, in response to the Lien and pursuant to Section 38 of the Lien Law, petitioners served a demand for an itemized statement on respondent, which was delivered on September 24, 2024. The demand included that within five days of receipt of the demand, Glory R furnish a verified statement in writing setting forth the items of labor and/or material and the value thereof which make up the Lien amount of \$150,000.00 and a statement in writing to set forth the terms of the contract under which the materials were provided (see NYSCEF Doc. No. 5). Petitioners contend that respondent failed to comply with the demand as it furnished an insufficient response (NYSCEF Doc. No. 6; the “Response”) and failed to comply with the requirements of Lien Law § 38 for reasons including:

(1) The Response consists of 7 line items with general descriptions and 3 line items are lump sums without any itemization or explanation of the purported “RRP Plumbing Consulting”, overhead and profit¹ (*see* NYSCEF Doc. No. 6 at Bates Number GLORY000003);

(2) Under “Hourly Labor,” it lists four persons but there is no description of their title or the work they each purportedly performed on the project and the specific dates on which those persons worked (*id.*);

(3) The Response does not include timesheets and does not set forth the description of the labor and the time spent by each laborer on specific days, including a total of 246 hours of overtime (*id.*); and

(4) The Response fails to identify which of the items are part of Respondent's contractual scope of work or were extra work or change orders on the Project (*id.*).

Petitioners also contend that the itemization in the Response is also completely inconsistent with the terms of Respondent's contract with H & Y (i.e., the AIA Document A401 – 2017, dated November 20, 2023) (*id.* at GLORY000004-24) (the "Subcontract"), in that (1) the Subcontract provides for a Subcontract Sum of \$250,000.00 (*id.* at § 10.1, GLORY000014) and unit prices listed in Exhibit B (*id.*) but Respondent failed to include said Exhibit B in the Response; and (2) Section 11.1.2 of the Subcontract provides that "[t]he period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows: Based on percentage of work complete" (*id.* at GLORY000015).

Despite these provisions in the Subcontract, Respondent failed to provide the Exhibit B to the Subcontract and all applications for payment and change orders submitted by respondent in connection with the subject construction project.

Under Lien Law § 38, once a demand for an itemized statement has been made by an owner or contractor, a lienor shall provide an itemized statement in writing which shall set forth the items of labor and/or material, the value of the material which make up the amount of the lien and set forth the terms of the contract under which such items were furnished (NY Lien Law § 38). Itemization is required only when it is necessary to apprise of the details of the lienor's claim, such as when extra work and materials are claimed or when there is an underlying dispute involving the nature and value of the work performed (*Pineda v AB Painting & Const., Inc.*, [NY Sup Ct, New York County 2015]; *Hudson Meridian Const. Group, LLC v ML Woodwork Inc.*, 2022 NY Slip Op 31886[U], 4 [NY Sup Ct, New York County 2022]; *Solow v Bethlehem Steel Corp.*, 60 A.D.2d 826, 826 [1st Dept 1978] appeal dismissed 46 N.Y.2d 836 [1978]). The statement served by the

lienor should set forth the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of labor charges (*Pineda v AB Painting & Const., Inc.* [NY Sup Ct, New York County 2015]; relying on *819 Sixth Ave. Corp. v T. & A. Assoc., Inc.*, 24 A.D.2d 446, 446 [1st Dept 1965]).

The Response supplied by the respondent is not sufficiently itemized or detailed so as to permit the petitioners to check the claim and therefore does not meet the requirements of Lien Law § 38 (*125 Broad CHP, LLC v Fine Craftsman Group, LLC*, 2023 N.Y. Slip. Op. 31549[U], 4 [N.Y. Sup. Ct., New York County 2023]; *Matter of DePalo v McNamara*, 139 A.D.2d 646, 646 [2d Dept 1988]).

The statute permits a court to cancel a lien if the lienor does not sufficiently comply with a court order requiring itemization (*Red Hook 160, LLC v 2M Meeh., LLC*, 203 A.D.3d 932 [2d Dept 2022]). Cancellation may be ultimately warranted if the respondent should prove unable or unwilling to furnish the required statement (see *Matter of DePalo v McNamara*, 139 A.D.2d 646, 646 [2d Dept 1988]). Therefore, if respondent is unable or unwilling to comply with this decision and order, the petitioner may make the appropriate application, pursuant to Lien Law § 38, to cancel and discharge the Lien (see *In re Pizzarotti, LLC v Advanced Const. Equip. Corp.* [NY Sup Ct, New York County 2024]).

Accordingly, it is hereby

ORDERED and ADJUDGED that the portion of the Verified Petition seeking to compel the respondent lienor, GLORY R CONSTRUCTION INC., to provide the petitioners, 651923 18 AVE LLC and AE & LY HOLDINGS, LLC, with an itemized statement in compliance with Lien Law § 38, including sufficient detail as to the labor and materials claimed, is GRANTED and the respondent shall provide such statement in connection with the Mechanic's Lien filed September

9, 2024 against the real property located at 1807 66th Street, also known as 6519-6523 18th Avenue, Brooklyn, New York, Block 5554, Lot 1; and it is further

ORDERED and ADJUDGED that respondent is directed to e-file the appropriate itemized statement within ten days of service upon respondent of this Decision and Order with notice of entry; and it is further

ORDERED that petitioners shall e-file a notice of deficiency (if any) within ten days of receipt of the respondent's itemized statement served pursuant to this order and respondent shall have ten days thereafter to correct any deficiencies and e-file a supplemental verified itemization no later than ten days after respondent's receipt of the notice of deficiency, and it is further

ORDERED that petitioners may file a motion for an order vacating and setting aside the said lien and canceling the Westchester Fire Insurance Company Bond No. K41924883 (NYSCEF Doc. No. 3 and 4, respectively), in the event that respondent fails to furnish a proper supplemental itemization of lien that complies with the requirements of Lien Law § 38 and the above discussed cases.

This constitutes the decision and order of the court.

3/28/25 Brooklyn, NY



HON. AARON D. MASLOW
Justice of the Supreme Court of the
State of New York

J.S.C.

KINGS COUNTY CLERK
FILED
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