Supreme Court of the State of New York Appellate Division, First Judicial Department

Acosta, P.J., Kapnick, Mazzarelli, González, Rodriguez, JJ.

16601 In the Matter OF W 54-7 LLC, Petitioner-Respondent, Index No. 150347/21 Case No. 2021-02741

-against-

INTERSYSTEM S&S CORP., Respondent-Appellant.

The Law Firm of Adam C. Weiss, PLLC, Glen Cove (Adam C. Weiss of counsel), for appellant.

Mark S. Friedlander, New York, for respondent.

Order, Supreme Court, New York County (Eileen A. Rakower, J.), entered on or about July 12, 2021, which granted the petition to vacate and discharge respondent's mechanic's lien against petitioner's property, unanimously affirmed, without costs. The court correctly vacated and discharged the mechanic's lien because the scaffold and sidewalk shed that respondent installed at the premises were temporary structures, not for the "permanent improvement" of real property within the meaning of Lien Law § 2(4). The contract between respondent and petitioner's contractor expressly contemplated the eventual removal of the scaffold and sidewalk shed, and the structures were in fact removed after the notice of lien was filed. Although arguably permanent repair work to the façade of the premises necessitated the construction of the scaffold and sidewalk shed for the safety of the public (*see* NY City Building Code [Administrative Code of City of NY, tit 28, ch 7] § BC 3314.1), the structures themselves effected no permanent change to the building. The project therefore falls outside the scope of labor and materials protected under the Lien Law (see Lien Law § 2[4];

Trystate Mech, Inc. v Macy's Retail Holdings, Inc., 94 AD3d 1097, 1098 [2d Dept

2012]; Negvesky v United Interior Resources, Inc., 32 AD3d 530, 531 [2d Dept 2006]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 3, 2022

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Susanna Molina Rojas Clerk of the Court