

Matter of Lowengrub v Cyber-Struct Gen. Contr., Inc.
2007 NY Slip Op 30002(U)
March 6, 2007
Supreme Court, New York County
Docket Number: 0101123
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EILEEN A. RAKOWER
J.S.C.

PART Part 5

Index Number : 101123/2007

DEX NO. _____

LOWENGRUB, LEONARD

OTION DATE _____

vs

CYBER-STRUCT GENERAL

OTION SEQ. NO. _____

Sequence Number : 001

OTION CAL. NO. _____

STAY PROCEEDINGS

Ti

otion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

PAPERS NUMBERED

Answering Affidavits -- Exhibits _____

1

Replying Affidavits _____

2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

MAR 12 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/6/07

EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

[* 1]

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
In the Matter of the Application of
LEONARD LOWENGRUB,

Petitioner,

Index No.
1001123/07

- against -

Decision and Order

CYBER-STRUCT GENERAL CONTRACTORS, INC.,

Respondent.

-----X
HON. EILEEN A. RAKOWER

Respondent brings this action for breach of a contract entered into for the purpose of home improvements to be performed at petitioner's home. Petitioner now seeks an order permanently staying arbitration and vacating a mechanics lien. Respondent opposes the petition.

Pursuant to the contract, dated February 24, 2005, respondent was to perform various home improvement work at petitioner's residence including, but not limited to, demolition; carpentry and millwork; installation of doors, windows and glass; thermal moisture, sound and vibration protection; and plumbing. In exchange for the work petitioner was to pay the initial contract sum of \$783,500.00, plus other charges for change orders.

Petitioner asserts that on January 26, 2006 respondent walked off the job "without cause." Additionally, Petitioner claims that respondent failed to perform its obligations under the contract when it used "inferior materials, substantially overcharged petitioner and negligently and improperly installed a heating system, air conditioning system, and elevator, and failed to pay subcontractors." Following the termination of its work, respondent claimed it was not paid in full, and, in accordance with the contract, commenced arbitration proceedings. Respondent also filed a mechanic's lien against petitioner's premises. Petitioner argues that respondent cannot commence arbitration because it did not possess a valid Home Improvement Contractor License at the time of performance and thus cannot utilize any of the

standard avenues of relief, including arbitration, in order to settle a dispute. Counsel for the petitioner claims that he confirmed respondent's unlicensed status when he contacted the Department of Consumer Affairs and, as of January 16, 2007, there was no record of such license.

Respondent argues, in opposition, that it is in possession of a home improvement license, number 1248042. Respondent does not state when it obtained the licence, nor does it refute petitioner's claims that it was unlicensed at the time that it worked on petitioner's premises. Petitioner, in his reply, submits a certified copy of the status of respondent's license application from Consumer Services for the New York City Department of Consumer Affairs. According to the status report, the application date of the license was February 8, 2007 and the status of the license was listed as "pending."

Pursuant to §20-387(a) of the Administrative Code of the City of New York:

"No person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor or salesperson from an owner without a license therefor."

In order for a home improvement contractor to recover damages in a breach of contract action, a contractor must possess a valid Home Improvement Contractor License issued by the New York City Department of Consumer Affairs both at the time of the pleading and at the time of the contract and performance. *B&F Building Corp. v. William J. Liebig et al*, 76 N.Y.2d 689, 692. Further, in addressing after-acquired licences, the court held that they are applicable only:

"where the contractor was licensed at the time that the work was done and cannot be used to validate a contract that was prohibited when performed." *Id.* at 694.

Petitioner submits evidence which proves that respondent did not apply for its Home Improvement Contractor's License until long after it signed the subject contract and long after work had begun on petitioner's premises. In fact, respondent did not apply for a license until after petitioner commenced this special proceeding.

WHEREFORE it is hereby,

ORDERED, that petitioner's request to permanently stay arbitration in this matter is granted, and it is further

ORDERED, that the mechanic's lien, dated February 7, 2006 taken against the real property known as 178 East 75th Street New York, New York, is vacated.

All other relief requested is denied . This constitutes the Decision and Order of the Court.

DATED: March 6, 2007



EILEEN A. RAKOWER, J.S.C.

FILED
MAR 12 2007
NEW YORK
COUNTY CLERK'S OFFICE