

Dellwood Dev. LLC v V. Matsouka, Inc.

2007 NY Slip Op 31860(U)

June 25, 2007

Supreme Court, New York County

Docket Number: 0105955/2007

Judge: Paul G. Feinman

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. PAUL G. FEINMAN

Index Number : 105955/2007

DELLWOOD DEVELOPMENT LLC.

VS.

V. MATSOUKA, INC.

SEQUENCE NUMBER : 001

MECHANICS LIEN

PART 52

INDEX NO. 105955/07

MOTION DATE 5/18/07

MOTION SEQ. NO. 001

MOTION CAL. NO. 29

The following papers, numbered 1 to _____ were read on this motion to/for Lease Lien

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is granted on default to extent set forth in annexed decision, order + judgment

UNFILED JUDGMENT
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B)

Dated: 6/25/07 [Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X

DELLWOOD DEVELOPMENT, LLC,
Petitioner,

-against-

V. MATSOUKA, INC.,
Respondent.

Index Number 105955/07
Submission Date 5/18/07
Mot. Seq. No. 001
Cal. No. 29

**DECISION, ORDER &
JUDGMENT**

Papers considered in review of this motion for default :

Papers
Notice of Petition and Affidavits Annexed.....

UNFILED JUDGMENT
his judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the County Clerk's Desk (Room
47B)

PAUL G. FEINMAN, J.:

Petitioner Dellwood Development moves unopposed¹ pursuant to Lien Law §38 of the State of New York for an order directing respondent to deliver to the petitioner a verified and itemized statement of the materials and work which resulted in a mechanics' lien upon the petitioner's property. For the reasons stated below, the motion is granted on default.

On November 8, 2006, respondent V. Matsouka, Inc. filed a Notice of Mechanic's Lien against the property located at 550 West 144th Street, New York, New York, in the amount of \$18,040, in the office of the New York County Clerk. Dellwood Development was and is still

¹ Respondent's counsel submitted to the Clerk of Part 52 an affirmation *after the petitions were marked submitted* in the motion submissions part. Such submission was without prior court approval. Apparently, counsel was seeking an adjournment and now requests the restoral of the petitions to the Room 130 submission calendar. Adjournment requests must be made to the Room 130 referee, who is authorized to decide upon such requests with both sides present. As to the issue of restoral based on this affirmation, to do so would in essence constitute an *ex parte* vacatur of respondent's default without proper service of a notice of a motion to vacate the default. The court expresses no view as to whether the such a motion would be granted and respondent is free to make a properly noticed motion to vacate its default. The parties are free, of course, to stipulate to vacate the respondent's default and restore the matter to the calendar.

the contractor in connection with the premises, and V. Matsouka filed the lien to recover for work it did between April 19 and May 26, 2006 at that site as a subcontractor of Dcllwood Development. Thereafter, on December 14, 2006 petitioner demanded a verified statement from respondent in writing within five days, pursuant to Lien Law §38 (Exhibit 2). Petitioner avers that respondent has not responded to its demand, and request an order directing the respondent to provide such verified statement.

Lien Law §38 provides that “a lienor who has filed a notice of lien shall, on demand in writing, deliver to the owner or contractor making such demand a statement in writing which shall set forth the items of labor and/or material and the value thereof which make up the amount for which he [or she] claims a lien...[i]f the lienor shall fail to comply with such a demand within five days... the person aggrieved may petition the supreme court for an order directing the lienor within a time specified in the order to deliver to the petitioner the statement required by this section.” This section further requires petitioner to give respondent “two days’ notice of such application” that “shall be made in the manner provided by law for the personal service of a summons.” Lien Law §38. Personal service of a summons upon a corporation is made pursuant to CPLR 311 by delivering the summons to an “agent authorized by appointment or by law to receive service.”

Here, petitioner demanded in writing an itemized statement of its debt to respondent on December 14, 2006. (Exhibit 3). After respondent failed to answer, petitioner commenced this proceeding on May 8, 2007 and served respondent with the Notice of Application and Petition by personal service upon their agent, pursuant to CPLR 311. (Exhibit 4). Having fulfilled the requirements of Lien Law §38, petitioner is entitled to an order directing the respondent to provide a specific itemized statement of its mechanics’ lien. Accordingly, it is

ORDERED and ADJUDGED that the petition is granted on default; and it is further;

ORDERED that respondent shall provide an itemized statement to petitioner of the debt in connection with 550 West 144th Street, New York, New York- Block 2075, Lot 53 on or before July 31, 2007.

This constitutes the decision, order and judgment of the court.

ENTER :



Dated: June 25, 2007
New York, New York

J.S.C.

UNFILED JUDGMENT
his judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B)