

**Matter of TPS Constr. N.Y. Inc. v Queens  
Lumber Co., Inc.**

2007 NY Slip Op 31905(U)

June 1, 2007

Supreme Court, Queens County

Docket Number: 0029249/2006

Judge: Lawrence Vincent Cullen

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owned by Bishnu Saha. The second was in the amount of \$18,984.76 against premises known as 35-05 214th Place, Bayside, New York owned by Yonis Mohammad. The third was in the amount of \$3,557.85 against premises known as 51-02 Parsons Boulevard, Flushing, New York owned by Susan Yuet Siew Wong and Tommy Lin Seng Chen. The fourth was in the amount of \$56,062.90 against premises known as 249-22 Beech Knoll Avenue, Little Neck, New York owned by Chong Da Xia and Xiao Jing Hu. The fifth was in the amount of \$17,578.32 against premises known as 25-08 Murray Street, Flushing, New York owned by Yu Chen Yang. The liens pertain to material furnished by lienor to petitioner a contractor hired by the above-named owners to rehabilitate their properties.

Lien Law § 11 requires the lienor to serve a copy of the notice of lien upon the owner within five days before or thirty days after filing the notice of lien and expressly states that the "failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien." Lien Law § 11-b requires a lienor, within five days before or thirty days after filing a notice of lien, to serve a copy of the notice of lien by certified mail on the contractor, subcontractor, assignee or legal representative for whom he was employed or to whom he furnished materials or if the lienor is a contractor or subcontractor to the person, firm or corporation with whom the contract was made. A lienor having a direct contractual

relationship with a subcontractor or a sub-subcontractor but not with a contractor shall also serve a copy of such notice by certified mail to the contractor. Lien Law § 11-b expressly states that the "failure to file proof of such a service with the county clerk within thirty- five days after the notice of lien is filed shall terminate the notice as a lien." Strict compliance with the statutory service and filing requirements of Lien Law § 11 and § 11-b is mandated and the court does not have discretion to excuse non-compliance. (See Matter of HMB Acquisition Corp. v F&K Supply, Inc., 209 AD2d 412 [1994]; see also Matter of PKS Development Co. v Kahn Lumber & Millwork Co., 187 AD2d 656 [1992]; Murphy Construction Corp. v Morrissey, 168 AD2d 877 [1990].)

In this case, to the extent that petitioner relies on Lien Law § 19 in support of its application, such reliance is misplaced since Lien Law § 19 does not permit a court to summarily discharge a lien based on violations of Lien Law § 11 and § 11-b. A court, however, may summarily discharge a lien in the absence of strict compliance with Lien Law § 11 and § 11-b. It is undisputed that lienor here failed to satisfy the requirements of Lien Law § 11-b by timely serving petitioner, the contractor to whom it furnished materials, with copies of the notices of lien and timely filing proof of such service. (See Matter of Denoyelles Co. v Requa Electrical Supply Co., 155 Misc 2d 451 [1992].) Thus, the liens terminated as a matter of law and must be cancelled. In addition, contrary to lienor's

contention, the part of petitioner's application to discharge the lien filed in Kings County was properly made to this court.

Accordingly, the branch of petitioner's application to discharge the liens filed by lienor in Kings County on the premises known as 433 Warren Street, Brooklyn, New York and in Queens County on the premises known as 97-05 50th Avenue, Corona, New York, 35-05 214th Place, Bayside, New York, 51-02 Parsons Boulevard, Flushing, New York, 249-22 Beech Knoll Avenue, Little Neck, New York and 25- 08 Murray Street, Flushing, New York is granted. In light of this determination, this Court need not address petitioner's alternative ground to discharge the liens, that is, lienor's failure to satisfy the requirements of Lien Law § 11.

Petitioner shall serve certified copies of the order to be entered hereon on the County Clerks of the Counties of Queens and Kings, who shall take appropriate action to vacate and cancel of record the notices of liens filed against the aforesaid premises and enter upon the margins of the records of same, notices of cancellation referring to the order.

The branch of petitioner's application seeking reasonable attorney's fees, costs and expenses incurred in obtaining copies of the subject notices of liens is also granted. (See Lien Law § 11- b.) Petitioner is directed to submit an affidavit of services on settlement of the order to be entered hereon.

Settle order.

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J . S . C .