

Shimada v Chih-Chieh Kao

2007 NY Slip Op 33553(U)

October 26, 2007

Supreme Court, New York County

Docket Number: 0110568/2007

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE
Justice

PART 10

Shimada

INDEX NO.

110568/07

MOTION DATE

- v -

MOTION SEQ. NO.

001

Kao

MOTION CAL. NO.

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

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NEW YORK
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Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

Dated: 10/26/07

JUDITH J. GISCHE, J.S.C.

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: Part 10

Akira Shimada and
Yuh Lan Hwu,

Petitioners,

Decision/Order

-against-

Index#110568/2007

Chih-Chieh Kao,

Defendant.

Mot. Seq. # 001

Pursuant to CPLR 2219(a) the court considered the following numbered papers on this motion:

PAPERS	NUMBERED
OSC, petition, exhibits.....	1
HY affirm in Opp., Kao affd. In Opp.....	2

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Hon. Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Petitioner seeks to summarily discharge a mechanics lien filed against real property located at 143 East 47th Street, New York, New York [block 1302 lot 29] ("property"). Lien Law §19(6). Respondent opposes the petition.

Respondent filed the subject lien on or about June 21, 2007, describing the labor she performed as "real estate brokerage services." As more fully set out in her opposition papers, respondent claims that she produced a ready willing and able buyer for the property and that co-brokers and the sellers "froze" her out of the transactional process. She seeks a commission as a result.

The heart of the issue presently before the court has nothing to do with the merits of the dispute regarding whether brokerage commissions are owed. The only issue before

the court is whether a real estate broker asserting such a claim is legally entitled to file a mechanics lien to enforce her rights. This court holds that she is not.

A mechanics lien is a statutory remedy enacted to protect persons who enhance the value of real estate by furnishing materials or performing labor with the owner's consent. It protects this limited class of persons by giving them an interest in the real estate to the extent of any material or labor provided. Schaghticoke Powder Co. v. Greenwich, 183 NY 306 (1905); Claudio Perfetto, Inc. v. Waste Management of NY, LLC, 274 AD2d 389 (2nd dept. 2000). Lien law § 3 expressly permits the filing of a such a lien by anyone "who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof."

Lien Law §2.4 expressly defines "improvement" as that term is used in connection with the lien law. Insofar a pertinent to this dispute it states:

"The term 'improvement' ...shall also include the performance of real estate brokerage services in obtaining a lessee for a term of more than three years of all or any part of real property to be used for other than residential purposes pursuant to a written contract of brokerage employment or compensation."

This provision has been interpreted to limit the use of mechanic's liens by real estate brokers to the express circumstances set out in the statute. Matter of Robert Plan Corp. AP v. Greiner-Maltz, Company, Inc., 229 AD2d 122 (2nd dept. 1997).

At bar respondent's lien for real estate commissions does not fall within the limited entitlement of the statute. It is not for services in connection with a lease, it is unclear if the property is residential or commercial and the lien was not filed with any written agreement of compensation.

Accordingly, it is hereby :


[* 4]
ORDERED that the petition to discharge the mechanics lien is granted in all respects, and it is further

ORDERED that the mechanic's lien filed by respondent is hereby vacated and discharged of record and the Clerk fo the County of New York is directed and authorized to notice upon the records of mechanics liens on file in this county the vacatur and discharge fo the mechanics lien affecting 143 East 47th Street, New York, NY 10017, Block 1302 lot 29, and it is further

ORDERED that any requested relief not otherwise expressly provided for herein is denied and that this shall constitute the decision and order of the court.

Dated: New York, NY
October 26, 2007

SO ORDERED:



J.G. J.S.C.

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