

Onekey, L.L.C. v Wooster Ventures, L.L.C.

2007 NY Slip Op 33896(U)

November 30, 2007

Supreme Court, New York County

Docket Number: 0600776/2006

Judge: Jane S. Solomon

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PRESENT: SOLOMON
Justice

PART 55

ONEKEY, L.L.C.

INDEX NO. 600776/2008

MOTION DATE 11 - 5 - 2007

- v -

MOTION SEQ. NO. 004

WOOSTER VENTURES, L.L.C.

MOTION CAL. NO. _____

The following papers, numbered 1 to 8 were read on this motion to/for compel

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...	<u>1 - 3</u>
Answering Affidavits - Exhibits _____	<u>4 - 7</u>
Replying Affidavits _____	<u>8</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion
is decided in accordance with the annexed memorandum decision and order.

FILED
DEC 03 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/30/07


JANE S. SOLOMON 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: IAS PART 55

-----X

ONEKEY, L.L.C.,

Plaintiff,

INDEX NO. 600776/2006

-against-

WOOSTER VENTURES, L.L.C., DL
CONTRACTING OF NY INC., BAY RIDGE
MECHANICAL CORP., IMPERIAL GLASSWORKS
INC., LAKE SERVICE CO., INC., CRANA
ELECTRIC INC., A&M ELECTRIC SERVICE,
INC., C&S CONSTRUCTION CONTRACTORS,
LLC, JOHN DOES 1-5 (fictitious) and
DOE CORPORATIONS 1-5 (fictitious)

DECISION and ORDER

Defendants.

FILED
DEC 03 2007
NEW YORK
COUNTY CLERK'S OFFICE!

-----X

JANE S. SOLOMON, J.

Defendant Wooster Ventures, L.L.C. ("Wooster") moves for an order (i) directing the New York City Department of Finance ("DOF") to refund a certain portion of the money Wooster deposited with it in order to discharge the mechanics lien of plaintiff Onekey, L.L.C. ("Onekey") on the real property located at 3-7 Wooster Street, New York, NY (the "Property"); and (ii) directing Onekey to furnish to Wooster an amended itemized statement of said lien. The motion is decided as follows.

The underlying dispute is over money Onekey claims it is owed by Wooster for construction of a new seven story building

at the Property. Wooster is the owner of the Property and engaged Onekey as its general contractor for the project. Onekey and several subcontractors completed the majority on the work pursuant to a contract and several change orders, but Onekey was terminated before construction could be finished.

On November 3, 2005, Onekey filed a Notice of Mechanics Lien against the Property, under which it claimed it was owed \$691,526.75 from Wooster. On February 17, 2006, Onekey filed a Partial Release of Mechanics Lien, under which it reduced the claimed amount to \$548,967.44, together with interest from November 30, 2005. On May 8, 2006, this Court granted Wooster's prior motion under Lien Law § 20, and permitted the discharge of Onekey's mechanics lien, together with all underlying mechanics liens that were filed by subcontractors retained by Onekey, upon Wooster's depositing \$548,967.44, together with interest from November 30, 2005, with the DOF. On May 15, 2006, Wooster deposited \$571,573.01 with the DOF. All claims then fully secured, Onekey and its subcontractors' mechanics liens were discharged.

Part of Onekey's mechanics lien consisted of sums that were owed to the following subcontractors: Jelean Fireplaces, Inc., Hoffman Floor Covering, Poggenpohl U.S., Inc., and Rotavele Elevator. Wooster submits copies of invoices and cancelled

checks which show that it has directly paid all amounts due to these four subcontractors for their work at the Property, and that a total of \$76,599.19 was paid to them. Accordingly, Wooster claims it is owed a refund of this amount from the money it deposited with the DOF.

Onekey does not deny that Wooster has paid \$76,599.19 to these four subcontractors. It contends, however, that Wooster should only be entitled to credits from Onekey for making payments directly to subcontractors if such payments are shown to be for Onekey's work, and if such work was not the subject of other credits issued by Onekey to Wooster. The documentary evidence submitted by Wooster is persuasive in showing that the payments made to the four subcontractors were in relation to their work at the Property, and therefore should reduce Onekey's payment obligations to those companies and the amount it claims due from Wooster. Moreover, during oral argument on November 5, 2007, counsel for Wooster agreed that his client would indemnify Onekey from any claims asserted by these subcontractors that are related to payment for work at the Property. Thus, Wooster should receive a refund of \$76,599.19 from the amount it deposited with the DOF.

With respect to the second part of Wooster's motion, given the history in the changes to the amount Onekey claims that

it is owed, and the fact that Wooster contests several change orders, in order to clarify the amount currently in dispute, Onekey should provide a definitive statement of the amount that it claims it is owed pursuant to Labor Law § 38.

Accordingly, it hereby is

ORDERED that upon the service of a certified copy of this Order, the DOF is hereby directed to pay to Wooster the sum of \$76,599.19, together with all interest that has accrued thereon from May 15, 2006, through the date of payment of said sum, minus all reasonable costs and expenses that have been incurred by the DOF; and it further is

ORDERED that, should any or all of Jelean Fireplaces, Inc., Hoffman Floor Covering, Poggenpohl U.S., Inc., or Rotavele Elevator, bring an action against Onekey in relation to non-payment for work at the Property, Wooster is directed to indemnify and hold Onekey harmless in such action; and it further is

ORDERED that within thirty (30) days from the date of entry hereof, Onekey shall furnish to Wooster an amended itemized statement, pursuant to Lien Law § 38, of all items of labor and/or materials, and the value thereof, for which it claims a lien on the Property.

Dated: November 30 2007

FILED
DEC 03 2007
NEW YORK
COUNTY CLERK'S OFFICE

J.S.

J.S.C.
JANE S. SOLOMON