

**Matter of Golds Plumbing & Heating Co., Inc. v
North Shore Plumbing Supply Co., Inc.**

2008 NY Slip Op 30815(U)

March 18, 2008

Supreme Court, New York County

Docket Number: 0102868/2008

Judge: Alice Schlesinger

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

PRESENT: ALICE SCHLESINGER

PART **IA** Part 16

Index Number : 102868/2008
GOLDS PLUMBING & HEATING CO.
 VS.
NORTH SHORE PLUMBING SUPPLY CO
 SEQUENCE NUMBER : 001
 MECHANICS LIEN

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

1 this motion to/for _____

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause — Affidavits —

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED 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 1412).

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

MAR 18 2008

Dated: _____

Alice Schlesinger
 ALICE SCHLESINGER J.S.G.

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
COUNTY OF NEW YORK: IAS PART 16

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1415).

In the Matter of the Application of

GOLDS PLUMBING & HEATING CO., INC.,

Petitioner,

For an Order Summarily Discharging of Record a
Notice of Lien, Dated February 13, 2008 filed by

Index No. 102868/08
Motion Seq. No. 001

NORTH SHORE PLUMBING SUPPLY CO., INC.,

Lienor.

-----X
SCHLESINGER, J:

In this proceeding, petitioner Golds Plumbing & Heating Co., Inc. seeks an order discharging the mechanic's lien filed by respondent North Shore Plumbing Supply Co., Inc. on February 13, 2008 and awarding costs and attorney's fees. The lien, in the amount of \$17,909.00, states that it is for plumbing materials furnished during the period from May 24, 2007 through July 23, 2007 in connection with work performed in cooperative apartment 4D/4E at 425 East 58th Street in Manhattan. North Shore was allegedly served with the petition by personal delivery to its managing agent, but has defaulted.

Golds asserts that the lien must be dismissed as untimely. In support of its petition, Golds points to Lien Law §10(1) which states in relevant part that, where the lien is based on an improvement "related to real property improved or to be improved with a single family dwelling, the notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or, within four months after... the final furnishing of materials, dating from the last item of ... materials furnished" This four-month limitation is in contrast to the eight-month rule in §10(1) for other types of property.

According to the lien, materials were last furnished on July 23, 2007, but the lien was not filed until February 13, 2008, seven months later. Petitioner correctly notes that Lien Law §19(6) expressly provides for dismissal of the lien where the lien has not been timely filed. *See also, Perrin v. Stempinski Realty Corp.*, 15 AD2d 48 (1st Dep't 1961), *app. dismissed* 11 NY2d 931 (1962).

However, the threshold issue is whether the subject premises, combined cooperative apartments 4D and 4E, qualifies as "real property improved ... with a single family dwelling" within the meaning of Lien Law §10(1). Although no appellate authority could be located on the issue, petitioner cited two cases which directly address the issue and hold that a cooperative apartment qualifies as a "single family dwelling" for which the notice of lien must be filed within four months: *Interior Resources International v. Shapiro and Shapiro*, NYLJ, March 24, 1992, 23:1 (Sup. Ct., N.Y.Co) (Diamond, J.) and *In re Abbott*, 14 Misc.3d 983 (Sup. Ct. N.Y. Co. 2007) (Feinman, J.), which relies on *Interior*.

In reaching its conclusion that a cooperative apartment qualifies as a single family dwelling subject to the four-month rule, the *Interior* court first noted that the Third Department had held that a condominium unit qualified as a single family dwelling in *Albany Indus. Dev. Agency v. DeGraff-Moffly*, 164 AD2d 20 (3rd Dep't 1990), and stated that no reason existed to treat a cooperative any differently. Judge Diamond then turned to the legislative history for the amendment to Lien Law §10(1), which left the four-month rule in place for single family dwelling and extended to eight months the time to file liens for large-scale projects. Quoting *Griffin Building & Construction Corp. v. RHD Construction Corp.*, 133 Misc.2d 335, 337 (Sup. Ct. 1986), Judge Diamond stated in *Interior* that:

the intent of the amendment was to allow an additional time for subcontractors working on large projects, ... to amicably collect money due from the general contractor before the lien has to be filed. The time to file for improvements to a single family residence was unchanged, because the project, involving a single structure, is small, construction schedules are shorter, and the four month time limit appeared to be adequate.

That same rationale applies here. As in the *Interior* case, it appears that the work done in this case was on a single unit of the cooperative, at the request of the owner of a single family dwelling unit, not work common to all areas of the cooperative. There is no evidence that this project was a large-scale project involving liens between general contractors and subcontractors for whose protection the statute was amended to give them more time to file liens. The four-month filing period for single family dwellings is therefore applicable here. Since the lien was not filed until seven months after the last materials were furnished, the lien is untimely.

Accordingly, it is hereby

ADJUDGED that the petition is granted and the lien is vacated. The Clerk is directed to mark the records accordingly. The Court denies petitioner's request for attorney's fees, as no authority was presented for such an award.

This constitutes the decision and judgment of this Court.

Dated: March 18, 2008

MAR 18 2008



J.S.C.
ALICE SCHLESINGER

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