

Dehollander v JRM Contr., Inc.

2008 NY Slip Op 31886(U)

July 3, 2008

Supreme Court, Wayne County

Docket Number: 0063847/2007

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

SCOTT W. DEHOLLANDER,

Petitioner,

-vs-

JRM CONTRACTING, INC., and
JAMES R. MADALENA,

Respondents

DECISION

Index No. 63847

2007

The Brocklebank Law Firm
Derek G. Brocklebank, Esq., of counsel
Attorneys for Petitioner

Larry R. Koss, Esq.
Attorney for Respondent

The Petitioner ("DeHollander") has commenced this special proceeding pursuant to various provisions of the New York Lien Law, for the purpose of obtaining an order summarily discharging a Mechanic's Lien filed on October 10, 2007, against real property located in Macedon, New York, by the Respondent JRM Contracting, Inc. and signed by its president, Defendant James Madelena. (collectively, "JRM"). The Respondents have opposed the application.

The Petition sets forth seven causes of action against the Respondents, to wit:

1) the lien is defective for failure to comply with Lien Law §9, due to the failure of a condition precedent for payment under the Contract;

2) the lien is defective on its face, in that it fails to state the “agreed price”, setting forth in its place an exaggerated price;

3) the lien is void under Lien Law §§39 and 39-a due to the Respondents’ willful exaggeration of the amount, which exaggeration also entitles the Petitioner to counsel fees;

4) the lien is deficient, in that its underlying basis involves a dispute between the Respondents and the Subcontractor, Macedon Excavating and Paving, which falls outside the purview of the Lien Law;

5) to the extent that the Respondents are entitled to assert a lien against the subject property, the lien is over-secured, and the Petitioner stands ready to deposit into Court a sum equal to estimated engineering costs due under the terms of the Contract, upon discharge of the lien;

6) the Petitioner seeks a response from JRM to a demand for an itemized statement regarding the amounts claimed in the Notice of Lien.

7) the Petitioner has served a Demand to Foreclose upon the

Respondents, requiring them to commence an action to foreclose the lien within 30 days of service.

The Respondents have filed an Answer to the Petition, which sets forth six Affirmative Defenses, to wit:

- 1) failure to state a cause of action;
- 2) culpable conduct on the part of the Petitioner;
- 3) equitable estoppel;
- 4) possible production of documentary evidence;
- 5) waiver of contractual rights by the Petitioner;
- 6) failure to mitigate by the Petitioner.

The Answer also sets forth a lengthy narrative of the facts which allegedly lead to the filing of the Notice of Lien.

The Petitioner has filed a Reply, seeking the dismissal of the Respondents' Affirmative Defenses, and disputing the Respondents' version of the underlying factual allegations.

The proceeding arises from a contract dated June 28, 2007, which was entered into between the parties, under whose terms JRM agreed to furnish labor and materials in connection with the improvement of vacant land owned by DeHollander, commonly known as the Chesterwood

Subdivision, Phase 2. The consideration for performance by JRM is set forth in Article 4 of the Contract as the transfer of lot 6 as shown on the subdivision plot by DeHollander to Madalena, together with the performance of additional engineering services by DeHollander.

The dollar value of the contract was calculated by reference to a formula, stating that “the value of all work shall be as itemized in the attached quote from Macedon Excavating plus a multiple of $1.10 \times (10\%)$.” The quote from Macedon Excavating set the cost of the work at \$79,861.00. Applying the conversion formula, the agreed contract price to be paid by the Petitioner to Respondent was \$87,847.10. Thus, this figure established the value of the real property to be conveyed by DeHollander to Madalena, plus engineering services.

JRM then entered into a Subcontract with Macedon Excavating and Paving, which covered the performance of road work, grading and installation of utilities. The agreed price of the subcontract was the aforesaid \$79,861.00.

The Contract provides in Article 5 that “there will be no progress payments made until final payment.” The contract further provides in Article 6 that payment (i.e. the transfer of title to lot 6) will be due “upon

acceptance of subdivision road for dedication by the Town of Macedon”.

Subsequent to the execution of the Contract and the Subcontract, the work proceeded, and the subdivision road was completed. However, a series of problems arose regarding the need for additional materials and labor. Disputes regarding the responsibility for the ordering of the alleged “extras” and the financial liability for payment of the additional sums created an escalating issue between DeHollander and JRM. The Petitioner maintains that, since it is JRM which entered into the Subcontract with Macedon Paving, agreeing to pay the Subcontractor on a “time and materials” basis for the alleged “extras”, the responsibility rests solely with JRM. The Respondents allege that it was the Petitioner who ordered all the changes and that he is therefore responsible for the additional costs, over and above the “agreed price in the contract”. When the dispute remained unresolved, JRM filed the Mechanic’s Lien, adding the cost of the “extras” (over \$17,000.00) to the contract price (\$87,847.10).

The issues presented by the Petition and the Answer, respectively, would initially suggest that such decided factual discrepancies regarding amounts and liability would certainly make a hearing unavoidable.

However, after careful consideration of the parties' arguments, this Court concludes that the Petitioner is entitled to an order under Lien Law §19 discharging the lien, based on his first cause of action.

New York's Lien Law has historically been strictly construed by the courts. The narrow purpose of this proceeding is to determine whether JRM was entitled to file the Notice of Lien against the Petitioner's real property. This proceeding is not a vehicle for resolving financial disputes between JRM and Macedon Excavating, nor is it a proper forum for the determination of JRM's claims that the terms of its contract with DeHollander has somehow been orally modified.

Lien Law §9, which sets forth the necessary contents of a notice of lien, requires that the notice state the amount unpaid to the lienor for such labor or materials. The instant contract between the parties specifically states that that payment - i.e., transfer of title to lot 6 - will be due upon acceptance of the subdivision road for dedication by the Town of Macedon, and further provides that no payments will be made until final payment. Documentation submitted with the Petitioner's supporting papers indicates that the Town stands ready to accept dedication of the road; however, it cannot do so, due to the filing of the lien by JRM.

Therefore, based on the terms of the Contract, the Court finds that the Respondents were not entitled to file a notice of lien, due to the fact that the Petitioner was not liable for any payment at the time of the filing, of the notice. The Court therefore holds that the Petitioner is entitled to an order discharging the Mechanic's Lien filed by the Respondent. The Court need not consider the Petitioner's other arguments, as this conclusion renders the other requests for relief as moot.

There does remain the issue of additional engineering services which were to be provided by DeHollander for the Respondents as part of the total contract price. The Petitioner - understandably so - suggests that the Respondents may wish to obtain those services elsewhere. The Petitioner estimates the value of those services at two thousand dollars (\$2,000.00). As a condition of filing the discharge of lien, the Petitioner is directed to deposit the sum of three thousand dollars (\$3,000.00) with the Wayne County Treasurer as security. The parties shall notify the Court at such time as the Town of Macedon has dedicated the subdivision road and the transfer of title to Lot 6 by DeHollander to Madalena has been completed. If the parties have not resolved the issue of the engineering services between themselves, a chambers conference will then be scheduled to

determine if a hearing is necessary on that sole issue.

Obviously, this Decision does not preclude the Respondents from seeking reimbursement for the alleged "extras" in any future action which may be authorized by law.

Therefore, the Petitioner is entitled to an Order summarily discharging the Mechanic's Lien filed by the Respondents, in accordance with the terms of this Decision.

Counsel for the Petitioner shall submit an order for signature.

Dated: July 3, 2008
Lyons, New York



Honorable Dennis M. Kehoe
Acting Supreme Court Justice

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SUPREME AND APPELLATE COURT