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

PRESENT: Edmead PART 35

Justice

East Coast Electric, Inc.

INDEX NO. 104163/08

MOTION DATE

-v-

1200 Fifth Associates, LLC et al.

MOTION SEQ. NO. 1

MOTION CAL. NO.

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

It is hereby

ORDERED that the branch of the motion of defendants 1200 Fifth Associates, LLC, Hypo Real Estate Capital Corporation, and The Chetrit Group, LLC for an Order, pursuant to CPLR §3212, granting them summary judgment and dismissing the Complaint of plaintiff East Coast Electric, Inc, on the ground that the Lien Notice is invalid, pursuant to Real Property Law §339-l, is denied; and it is further

ORDERED that the branch of the motion of defendants 1200 Fifth Associates, LLC, Hypo Real Estate Capital Corporation, and The Chetrit Group, LLC for an Order, pursuant to CPLR §3212, granting them summary judgment and dismissing the Complaint of plaintiff East Coast Electric, Inc., on the ground that the Lien Notice is invalid, pursuant to Lien Law §9(7), is granted; and it is further

ORDERED that the Notice of Mechanic's Lien filed by plaintiff East Coast Electric, Inc. with the New York County Clerk's Office on March 22, 2007 against the property known as 1200 Fifth Avenue, New York, New York, Block 1607, Lot 1, is hereby vacated, canceled and discharged of record, and the New York County Clerk is hereby directed to mark said lien discharged on the lien docket together with a reference to this Order; and it is further

ORDERED that the cross-motion of plaintiff East Coast Electric, Inc., for an Order granting it (1) leave, pursuant to Lien Law §12-a(2), to amend its Lien Notice, nunc pro tunc, to reflect the new tax lots created after 1200 Fifth's Declaration of Condominium was declared effective, (2) leave to amend its Complaint, and (3) such other and further relief as the Court may deem just, proper and equitable is denied; and it is further

ORDERED that defendants serve a copy of this Order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: March 11, 2009

HON. CAROL EDMEAD J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

----------x

EAST COAST ELECTRIC, INC.,

Index No. 104163/08

Plaintiff,

-against-

DECISION/ORDER

1200 FIFTH ASSOCIATES, LLC, HYPO REAL ESTATE CAPITAL CORPORATION, TOTAL SAFETY CONSULTING, LLC, REDLYN ELECTRIC CORP., BAY CRANE SERVICE, INC., PATTERSON-KELLEY CO., PARK AVENUE BUILDING AND ROOFING SUPPLIES, INC., KAMCO SUPPLY CORP., FULL MECHANICAL, INC., LE NOBLE LUMBER CO., INC., THE CHETRIT GROUP, LLC and ARCADE CONTRACTING & RESTORATION, INC.,

Defendants.

----------x

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action, plaintiff East Coast Electric, Inc. ("plaintiff") seeks to foreclose on a Notice of Mechanic's Lien for $128,397 on real property located at 1200 Fifth Avenue, New York, New York, 10029 ("the Property").

Defendants 1200 Fifth Associates, LLC ("1200 Fifth"), Hypo Real Estate Capital Corporation ("Hypo"), and The Chetrit Group, LLC ("Chetrit") (collectively, "defendants") move for an Order, pursuant to CPLR §3212, granting summary judgment and dismissing plaintiff's Complaint, on the ground that the Lien Notice is invalid.

Plaintiff opposes defendants' motion and cross-moves for an order granting it 1) leave, pursuant to Lien Law §12-a(2), to amend its Lien Notice, *nunc pro tunc*, to reflect the new tax lots created after 1200 Fifth's Declaration of Condominium ("Declaration") was declared

effective, 2) leave to amend its Complaint, and 3) such other and further relief as the Court may deem just, proper and equitable.

Factual Background[1]

1200 Fifth purchased the Property for the purpose of creating individual condominium units for resale. To accomplish this, 1200 Fifth retained Arcade Contracting and Restoration, Inc. ("Arcade") to perform construction work ("the work"). Subsequently, Arcade retained plaintiff as an electrical subcontractor to provide labor and materials in connection with the work. Plaintiff alleges that between August 24, 2005 and September 15, 2006 it performed work and provided materials at the Property, for which it was owed the sum of $128,397. However, plaintiff was not paid. On March 22, 2007, plaintiff filed a Notice Under Mechanic's Lien Law with the Clerk of the County of New York against the Property (the "Lien Notice").

Defendants' Motion

Defendants argue that the Lien Notice is invalid as a matter of law, because it represents a "blanket lien" filed against a superseded lot constituting the entire building.

On March 12, 2007, the New York City Department of Finance, Office of the City Register ("the City Register"), accepted and recorded the Declaration. The City Register also created new tax lots for the Property. Formerly, the Property was listed as Block 1607, Lot 1. After the Declaration was recorded, however, the City Register issued new tax lot numbers, designating the Property as Block 1607, Lots 1001-1052, inclusive. The Recording Document reflects the creation of the new tax lots for each of the individual condominium units. On March

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[1]Information taken from defendants' motion and plaintiff's memorandum of law in support of plaintiff's cross-motion.

22, 2007, more than a week after defendants filed the Declaration and the City Register designated new tax lots for the Property, plaintiff filed its Lien Notice. The Lien Notice describes the Property as Block 1607, Lot 1, instead of Block 1607, Lots 1001-1052. Thus, defendants argue, the Lien Notice is an invalid "blanket lien" against the Property.

Defendants contend that the Lien Notice represents an improper attempt to create a lien on the common areas of the condominium, without unanimous consent of the condominium owners, in violation of New York Real Property Law §339-l. Alternatively, the Lien Notice represents an attempt to lien the individual condominium units by filing a lien against the superseded block and lot for the entire building, in violation of New York Lien Law §9(7). Either way, the Lien Notice is facially invalid, defendants argue, and New York Lien Law §19 permits the summary discharge of facially invalid lien notices. Because plaintiff's Lien is facially invalid, it should be summarily vacated, and the complaint, which seeks solely to foreclose on a facially invalid lien, should be dismissed in its entirety.

Plaintiff's Opposition and Cross-Motion

Plaintiff argues that material issues of fact exist that require the denial of defendants' motion. In essence, defendants are incorrect in their assertions about the Lien Notice. *Inter alia*, (a) at all relevant times herein, 1200 Fifth was the sole owner of the Property and all of the condominium units created pursuant to the Declaration; (b) plaintiff has complied with the requirements of all relevant provisions of New York condominium and lien law; and (c) there is no prejudice to the defendants by any alleged misdescription of the lots owned by 1200 Fifth at the time the Lien was filed.[2] Plaintiff further argues that, should the Court deem it necessary,

[2]Plaintiff's memorandum of law ("plaintiff's MOL"), p. 3.

plaintiff's cross-motion should be granted and plaintiff should be permitted to file and serve an amended notice of lien, *nunc pro tunc*.

First, plaintiff argues that its Lien Notice does not violate Real Property Law §339-l. Plaintiff contends that 1200 Fifth was the sole owner of the Property between August 24, 2005 and September 15, 2006, when plaintiff was retained and performed the work at the Property, on March 12, 2007, when the City Register accepted and recorded defendants' Declaration, and on March 22, 2007, when plaintiff filed its Lien Notice. In fact, upon information and belief, there was no transfer of ownership of any units created by the Declaration until a transfer by deed dated March 27, 2007 and recorded April 24, 2007, after the filing of plaintiff's Lien. Defendants do not dispute that it retained Arcade to act as general contractor and perform construction work at the Property. Defendants do not dispute that plaintiff was retained as an electrical subcontractor and that plaintiff provided labor and materials in connection with the work. In fact, defendants admit that the work was performed in connection with converting the Property into residential condominium units. Defendants' only argument is that the Lien is defective because it describes the Property as Block 1607, Lot 1, the original tax lot, instead of Block 1607, Lots 1001-1052, the new tax lots created after the Declaration was filed.

Plaintiff contends that defendants do not deny that the address for the Property and the other information in the Lien are accurate and proper. Plaintiff also points out that 1200 Fifth and Hypo identified the Property as Block 1607, Lot 1 in the amendments to the UCC Financing Statements between 1200 Fifth and Hypo, dated June 14, 2007 and recorded June 21, 2007 ("the

Amendments"), after the Declaration was filed (cross-motion, ¶15, referring to Exh. C).[3] Although defendants argue that plaintiff failed to get the required consent of the owners for the Lien Notice, in violation of Real Property Law §339-l, defendants do not dispute that plaintiff needed to obtain consent only from one owner, 1200 Fifth, to perform the work at the Property. The sole owner at the time plaintiff was retained, performed the work and filed the Lien was 1200 Fifth, plaintiffs argue. Accordingly, in compliance with Real Property Law §339-l, plaintiff performed the work and filed the Lien with the unanimous consent of the only unit owner, 1200 Fifth.

Second, plaintiff argues that its Lien Notice substantially complies with the property-description requirements of New York Lien Law §9(7), and defendants fail to address the language of the statute. The Property is a single building in New York City. As defendants confirm, the work and material provided by plaintiff were provided in connection with 1200 Fifth's work to convert the building into a condominium. There is no ambiguity about this location, and there is nothing in the statute that even requires a block and lot number description, plaintiff argues.

Further, the caselaw on which defendants rely is distinguishable, in that in none of these cases were all of the units of the condominium still owned by the sponsor entity that consented to the work, as in this action. Moreover, in none of these cases does the court even discuss when the units at issue were sold to third parties or how many units were owned by the original sponsor or by third parties. Contrary to the facts in this action, in each of the cases defendants cite, it

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[3]Actually, Exh. C comprises three UCC documents, each dated June 8, 2007. The first page of each document describes the Property as "Block 1607, Lot 1, 1200 Fifth." On the Amendment page of the each document, the amended collateral is described as "Unit No. 8B in The 1200 Fifth Condominium, 1200 Fifth, New York, New York, designated as Section 6, Block 1607, Tax Lot 1021."

appears that at the time a lien was filed the units in the condominium had been sold to third parties. Plaintiff contends that defendants do not recite the specific language of the relevant statutes in their motion papers, because they are seeking to stretch and interpret the language to meet their goal of having plaintiff's action dismissed without affording plaintiff the opportunity to prove its case on the merits. The facts of this matter require denial of defendants' motion.

Third, plaintiff argues that its cross-motion to amend the Lien Notice *nunc pro tunc,* pursuant to Lien Law 12-a(2), should be granted. Plaintiff's Lien Notice substantially complies with Lien Law §23, which states:

> This article is to be construed liberally to secure the beneficial interests and purposes thereof. *A substantial compliance with its several provisions* shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same" (*emphasis added*).

Where, as here, the notice of lien substantially complies with the notice provisions of Lien Law §9, a court may grant leave to amend the notice provided that there is no prejudice to existing lienors, mortgages or good faith purchasers, and here, defendants do not allege any prejudice from the filing of the Lien. Further, courts have found that lien notices are substantially compliant even in instances where liens have been filed against superseding lots and where there have been prior good-faith purchasers of individual units.

Plaintiff argues that any defect in plaintiff's Lien is ministerial. Plaintiff filed the Lien Notice only ten days after the Declaration was recorded, and no individual unit owners existed at that time. Courts routinely have allowed parties to amend substantially compliant lien notices to include current lot numbers and exclude property no longer owned by the project owner.

Defendants' Reply and Opposition to Cross-Motion

Defendants contend plaintiff's arguments lacks merit. First, plaintiff misreads the law.

Under Real Property Law §339-l, the consent to lien the common elements of the condominium structure (and not consent to the work) is needed (*id.*, p. 1). Defendants further contend that, in analyzing motions to discharge "blanket liens" like the one plaintiff seeks to enforce here, courts have found that the filing of the liens themselves on common elements required the unanimous consent of all owners (id., pp. 3-4). Here, plaintiff has not provided any admissible evidence that it obtained consent to lien the common elements of all of the condominium unit owners, even if, as plaintiff alleged, 1200 Fifth owned all of the common elements at the time of plaintiff's Lien (id., p. 4). This failure alone requires that summary judgment be granted. "In any event, ending all inquiry, 1200 Fifth has provided admissible evidence, in the form of an affidavit, that it did not grant [plaintiff] permission to file its Mechanic's Lien against the common elements" (defendants' Reply MOL, p. 4).[4]

Defendant also argues that plaintiff failed to provide any admissible evidence that 1200 Fifth consented to plaintiff's work; instead it relies on a mere affirmation from an attorney lacking personal knowledge. Plaintiff's failure to oppose defendant's summary judgment motion with admissible evidence is insufficient to defeat defendants' motion.

Further, plaintiff's allegations regarding the Amendments are wrong. The "Recording and Endorsement Cover Page" to each of the three UCC filings which refers to the Property by that tax lot, was created by the clerk. Certainly, Hypo cannot be bound by the actions of a recording clerk, defendants argue. Moreover, the reference to Block 1607, Lot 1, the former tax lot can be explained: Each of the UCC filings are amendments of UCC filings made in January

[4] See the affidavit from Meyer Chetrit, a member of 1200 Fifth, ("Meyer Aff."), wherein he states simply that 1200 Fifth never consented to plaintiff's filing of the Lien Notice. (Meyer Aff. ¶ 6). Therefore, defendants' motion should be granted.

2005, before the Declaration that created the new tax lot numbers. Indeed, these UCC amendments – each of which makes no mention of the superseded tax lot – amend the collateral to include tax lot 1021, a new tax lot created after the Declaration. Since the UCC filings were amending a prior filing, it makes reasonable sense that the recording clerk would reference the prior tax lot to which the amendment would apply (*id.*).

Defendants also argue that plaintiff has not substantially complied with the Lien Law by simply providing the address of the Property on the Lien Notice, since caselaw requires that the proper tax lot be provided on the Lien Notice. Finally, defendants argue, caselaw does not permit amendment of defective liens, and the caselaw plaintiff cites is distinguishable. Thus, summary judgment dismissing the complaint is appropriate, in that the lien plaintiff seeks to foreclose is an improper blanket lien, to be summarily vacated, pursuant to Lien Law §19(6).

Plaintiff's Reply in Support of Cross-Motion

Plaintiff argues that the Meyer Aff., which alleges that 1200 Fifth never consented to plaintiff's filing of the Lien Notice, is of no merit or consequence; nor is defendants' argument that plaintiff failed to submit admissible proof that it had the consent to perform the work at the Property. Defendants have been served with the Verified Notice of Lien and the Verified Complaint asserting the work performed at the project and the amount due and owing for such work. Defendants do not assert that they did not receive the benefit of such work, that plaintiff did not perform such work, or that plaintiff was not properly hired by defendants' general contractor, Arcade, to perform work at the project. Mr. Chetrit does not deny that plaintiff had the consent of the fee owner and of the owner of all the units to perform the work for which it has filed its lien and for which it seeks payment.

Plaintiff further argues that Real Property Law §339-l was intended to protect individual unit purchasers; it was not intended to protect and benefit a project owner or to require consent of unit owners to file a lien upon the common elements of a condominium where the project owner is the sole owner of all units at the time a lien notice is filed. The law was intended to require the consent of good-faith purchasers of individual units prior to filing a lien notice. Plaintiff also argues that, contrary to defendants' arguments, the First Department has held that a project owner is not intended to be protected by the Condominium Act if it is the sole owner of all condominium units and common elements at the time of the filing of a lien notice.

Plaintiff argues that the cases defendants cite are distinguishable, that its Lien Notice is not invalid as a matter of law, and that its cross-motion for leave to amend is warranted.

Analysis

Summary Judgment

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the "cause of action . . . has no merit" (CPLR §3212[b]), sufficient to warrant the court as a matter of law to direct judgment in his or her favor (*Bush v St. Claire's Hosp.*, 82 NY2d 738, 739 [1993]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Wright v National Amusements, Inc.*, 2003 N.Y. Slip Op. 51390(U) [Sup Ct New York County, Oct. 21, 2003]). This standard requires that the proponent of a motion for summary judgment make a prima facie showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Silverman v Perlbinder*, 307 AD2d

230, 762 NYS2d 386 [1st Dept 2003]; *Thomas v Holzberg*, 300 AD2d 10, 11, 751 NYS2d 433, 434 [1st Dept 2002]). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions" (CPLR § 3212[b]). A party can prove a *prima facie* entitlement to summary judgment through the affirmation of its attorney based upon documentary evidence (*Zuckerman*; *Prudential Securities Inc. v Rovello*, 262 AD2d 172 [1st Dept 1999]).

Alternatively, to defeat a motion for summary judgment, the opposing party must show facts sufficient to require a trial of any issue of fact (CPLR § 3212[b]). Thus, where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so (*Vermette v Kenworth Truck Co.*, 68 NY2d 714, 717 [1986]; *Zuckerman* at 560, 562; *Forrest v Jewish Guild for the Blind*, 309 AD2d 546, 765 NYS2d 326 [1st Dept 2003]). Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist (*Zuckerman* at 562). The defendant "must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist" and "the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief" *(Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd*, 62 NY2d 686 [1984]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient *(Alvord and Swift v Steward M. Muller Constr. Co.*, 46 NY2d 276, 281-82, 413 NYS2d 309 [1978]; *Fried v Bower & Gardner*, 46 NY2d 765, 767, 413 NYS2d 650 [1978]; *Platzman v*

American Totalisator Co., 45 NY2d 910, 912, 411 NYS2d 230 [1978]; *Mallad Const. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290, 344 NYS2d 925 [1973]; *Plantamura v Penske Truck Leasing, Inc.*, 246 AD2d 347, 668 NYS2d 157 [1st Dept 1998]).

Discharge of a Mechanic's Lien

Real Property Law Subdivision 1of Section 339-l, relied on by the defendants, essentially provides that no lien of any nature may be created against the common elements of a condominium except with the unanimous consent of the unit owners (*see Matter of Diamond Architecturals v EFCO Corp.*, 179 AD2d 420, 421 [1st Dept], *appeal dismissed* 80 NY2d 919 [1992] [Real Property Law §339-l(1) "prohibits creation of a lien against the common elements of the condominium subsequent to the recording of the condominium declaration without the unanimous consent of the unit owners"]).

Defendants failed to demonstrate that the Lien Notice violated New York Real Property Law §339-l, as a matter of law.

Real Property Law §339-l provides in relevant part that:

> 1. Subsequent to recording the declaration and while the property remains subject to this article, no lien of any nature shall thereafter arise or be created against the common elements except with the unanimous consent of the unit owners. During such period, liens may arise or be created only against the several units and their respective common interests.
>
> 2. Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to article two of the lien law against the unit of any unit owner not expressly consenting to or requesting the same, except in the case of emergency repairs.

Here, it is undisputed that 1200 Fifth was the sole owner of the Property at the time plaintiff filed its Lien Notice, and that 1200 Fifth consented to the work plaintiff performed at the Property, which served as the basis for the Lien Notice. Thus, since 1200 Fifth retained an interest in the

units of the condominium Property and in the common areas of the Property at the time of the filing of the Lien Notice, the lien was valid to the extent of those interests (*see Advanced Alarm Technology, Inc. v Pavilion Assoc.*, 145 AD2d 582, 536 NYS2d 127 [2d Dept 1988] *citing* Real Property Law § 339-l[1]; *see also, A.C. Green Elec. Contractors, Inc. v Fu*, 240 AD2d 243, 244-45 [1st Dept 1997]).

That there is no evidence that plaintiff obtained 1200 Fifth's consent for the Lien Notice, as prescribed by Real Property Law §339-1(1), is not dispositive. 1200 Fifth was the only owner when plaintiff filed its Lien Notice, and thereby, owned *both the common elements and the individual units of the condominium*. The First Department cautioned against the "mechanical application" of Real Property Law §339 in a situation where the pre-conversion owner of a condominium "was still the record owner of the common elements and claimed equitable title to them" at the time a lien was filed (*A.C. Green Elec. Contractors, Inc. v Fu*, 240 AD2d 243, 244-45 [1st Dept 1997]). The Court in *A.C. Green* found summary dismissal of a mechanic's lien, pursuant to Real Property Law § 339-l, unwarranted, noting, *inter alia*, that the "Condominium developer retained ownership of an individual unit and the common elements at the time the liens were filed by plaintiff" (*id.* at 245). Further, the Court in *A.C. Green* makes clear that Real Property Law §339 was enacted to protect individual purchasers of condominium units, not pre-conversion owners (*id.*).

Accordingly, defendants' motion for summary judgment dismissing the Complaint on the ground that the Lien Notice violates Real Property Law 339-l, is denied.

However, a court can cancel or discharge a mechanic's lien on the grounds specified by New York Lien Law, one of which is in question herein: where the notice of lien is invalid on its

face (Lien Law §19; *Milbank-Frawley Housing Development Fund Co. v Marshall Const. Co.*, 71 Misc 2d 42, 44 [1972], *citing Matter of Cohen*, 209 AD 413 [1924] and *Matter of Supreme Plumbing Co. v Seadco Bldg. Corp.*, 224 AD 844 [1928]). In this regard, Lien Law §19(6) provides in relevant part that

> Where it appears from the face of the notice of lien that the claimant has no valid lien by reason of the character of the labor or materials furnished and for which a lien is claimed, or where for any other reason the notice of lien is invalid by reason of failure to comply with the provisions of section nine of this article, or where it appears from the public records that such notice has not been filed in accordance with the provisions of section ten of this article, the owner or any other party in interest, may apply to the supreme court of this state, or to any justice thereof, or to the county judge of the county in which the notice of lien is filed, for an order summarily discharging of record the alleged lien.

According to Lien Law §9(7), a valid lien must contain a description of the property subject to the lien that is "sufficient for identification."

It has been held that a lien that sets forth the former superseded lot number for the entire condominium site and is filed subsequent to a Declaration of Condominium is invalid under Lien Law §9(7), as it fails to describe properly the specific condominium units that the lienor sought to encumber (*Northeast Restoration Corp. v K & J Const. Co., L.P.*, 304 AD2d 306, 757 NYS2d 542 [1st Dept 2003] ["notice of mechanic's lien, which was filed after the recording of a condominium declaration on the subject building, is invalid under Lien Law § 9 (7) as against specific condominium units because, by setting forth the former superseded single lot number for the entire building rather than the separate lot numbers assigned to each unit in connection with the conversion, it fails to properly describe the specific units that plaintiff sought to encumber"] *citing Application of Atlas Tile and Marble Works, Inc. and Atamco Inc.*, 191 AD2d 247, 248 [1st Dept 1993]). By failing to limit the lien to particular units of a condominium, the lienor creates an invalid "blanket lien" on the entire property *(Advanced Alarm Technology, Inc. v Pavilion*

Associates, 145 AD2d 582, 584 [2d Dept 1988]).

Here, it is clear and undisputed that the Lien Notice described the property as Block 1607, Lot 1. It is further undisputed that plaintiff filed the Lien Notice on March 22, 2007, after the Declaration was filed a week earlier, on March 12, 2007. After the City Register accepted and recorded the Declaration, the City Register issued new tax lot numbers, designating the Property as Block 1607, Lots 1001-1052, reflecting the individual condominium units. Therefore, since the Lien Notice set forth the former superseded single lot number for the entire building rather than the separate lot numbers assigned to each unit in connection with the conversion, it failed to properly describe the specific units that plaintiff sought to encumber, and created an improper blanket lien.

As a result, the Lien Notice is invalid since it failed to adequately describe the property pursuant to Lien Law § 9(7), and is summarily canceled.

Leave to Amend

"Lien Law §12-a, providing for amendments of notices, *nunc pro tunc*, presupposes the existence of a valid lien and may not be construed to revive an invalid notice of lien" *(Application of Atlas Tile and Marble Works, Inc. and Atamco Inc.*, 191 AD2d 247, *supra; see also Northeast Restoration Corp. v K & J Const. Co., L.P.*, 304 AD2d at 307, *supra* [amendment of lien, which improperly identified the former superseded single lot number for the entire building rather than the separate lot numbers assigned to each unit in connection with its conversion, *nunc pro tunc*, "not warranted merely because the lien's misidentification of the lot numbers and owners was the result of plaintiff's apparently inadvertent failure to make a thorough search of the relevant public records"]). Here, the Lien Notice is invalid, on its face,

and canceled. Therefore, plaintiff's motion for leave to amend is denied.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the branch of the motion of defendants 1200 Fifth Associates, LLC, Hypo Real Estate Capital Corporation, and The Chetrit Group, LLC for an Order, pursuant to CPLR §3212, granting them summary judgment and dismissing the Complaint of plaintiff East Coast Electric, Inc., on the ground that the Lien Notice is invalid, pursuant to Real Property Law §339-l, is denied; and it is further

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ORDERED that the Notice of Mechanic's Lien filed by plaintiff East Coast Electric, Inc. with the New York County Clerk's Office on March 22, 2007 against the property known as 1200 Fifth Avenue, New York, New York, Block 1607, Lot 1, is hereby vacated, canceled and discharged of record, and the New York County Clerk is hereby directed to mark said lien discharged on the lien docket together with a reference to this Order; and it is further

ORDERED that the cross-motion of plaintiff East Coast Electric, Inc., for an Order granting it (1) leave, pursuant to Lien Law §12-a(2), to amend its Lien Notice, *nunc pro tunc*, to reflect the new tax lots created after 1200 Fifth's Declaration of Condominium was declared effective, (2) leave to amend its Complaint, and (3) such other and further relief as the Court may

deem just, proper and equitable is denied; and it is further

ORDERED that defendants serve a copy of this Order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: March 11, 2009

Hon. Carol R. Edmead, J.S.C.

HON. CAROL EDMEAD