

Ozouly v American Contr. Solutions, LLC

2009 NY Slip Op 31370(U)

June 24, 2009

Supreme Court, Kings County

Docket Number: 32973-2008

Judge: James G. Starkey

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CIVIL TERM, PART 6
HON. JAMES G. STARKEY

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YOSI OZOULY, J&Y PROPERTIES AND
SAHPNA REALTY CORP.,

Petitioners,

DECISION

-against-

INDEX NO.: 32973-2008

AMERICAN CONTRACTING SOLUTIONS, LLC and
DANIEL HANUKA,

Respondents.

Dated: June 24, 2009.

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APPEARANCES OF COUNSEL

For Petitioner(s):

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For Respondent(s):

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Caption: Ozouly, et. al. v. American Contracting Solutions, LLC and Hanuka
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FACTS AND PROCEDURAL BACKGROUND

By Order to Show Cause with a supporting petition, Yosi Ozouly, J&Y Properties and Sahnna Realty Corp., seek an order canceling a certain mechanic's lien filed against the real property located at 454 Rockaway Avenue, Brooklyn, New York. Respondents have opposed this application.

On February 26, 2008, respondent American Contracting Solutions LLC (hereinafter "American") filed a mechanic's lien in which it alleged that it was owed sixty seven thousand dollars for labor performed and material furnished at 454 Rockaway Avenue, Brooklyn, New York pursuant to a contract with petitioners Yosi Ozouly and J&Y Properties, and owned by petitioner Sahnna Realty Corp.

In seeking to cancel this mechanic's lien, petitioners contend that the amount of money due American was paid in full pursuant to the terms of the contract. Moreover, they argue that American did not have the requisite home improvement contractor's license pursuant to Administrative Code of the City of New York § 20-387 and that Sahnna Realty Corp., which purchased the real property on January 29, 2008, did not agree to assume liability pursuant to the contract or have American perform additional work at the location.

In opposition, respondents assert that certain changes made to the original contract increased the total cost of the work by sixty seven thousand dollars, the amount referred to in the mechanic's lien. Further that on February 2, 2009, two days after Sahnna Realty Corp. purchased

the property and four days before the deed was recorded, they performed this additional work at the premises. Finally, respondents contend that Administrative Code § 20-387 (a) is inapplicable to contracts between corporations and contractors.

LAW AND APPLICATION

Administrative Code of the City of New York § 20-387 (a) states: “No person shall solicit, canvas, sell, perform or obtain a home improvement contract as a contractor or salesperson from an owner without a license therefor.” Such provisions have been held to bar any recovery for either breach of contract or quantum meruit on the part of the unlicensed home improvement contractor and further preclude an unlicensed contractor from foreclosing a mechanic’s lien. See *Callos, Inc. v. Julianelli*, 300 A.D.2d 612, 613, 752 N.Y.S.2d 398 (2nd Dept. 2002), *lv. den.*, 100 N.Y.2d 502, 761 N.Y.S.2d 595 (2003); *Matter of Ashmawy v. L.I. Dock & Bulkhead Corp.*, 251 A.D.2d 500, 501, 674 N.Y.S.2d 711 (2nd Dept. 1998). The Administrative Code defines home improvement as including the renovation of any building or portion thereof used as a residence or dwelling place. See *Administrative Code § 20-386 (2)*.

A building is defined as any structure containing no more than four residential or dwelling units. See *Administrative Code §20-386(3)*. These provisions clearly indicate that under Administrative Code § 20-387(a) a license is required for residential space even where the space is only part of a building which is also used for non-residential purposes, provided the building has no more than four residential units. See *Franklin Home Improvements Corp. v. 687 6th Avenue Corp.*, 19 Misc.3d 1107 [A], 2008 N.Y. Slip. Op. 50593 (U) (Sup. Ct., Kings Coun. 2008). Where a contract is for both residential and commercial work, the contract is non-severable and the failure to obtain a home improvement license bars an unlicensed contractor

from recovery. *Ibid.* See also *Young's L & M Constr. Inc. v Kelley*, 13 Misc.3d 307, 310, 822 N.Y.S.2d 409 (Sup. Ct. New York Coun. 2006).

The Administrative Code further states that an owner is any homeowner, cooperative shareholder, condominium unit owner, tenant, or any other person who orders, contracts for or purchases the home improvement services of a contractor or the person entitled to the performance of the work of a contractor pursuant to a home improvement contract. See *Administrative Code § 20-386 (4)*. Also, a person is defined as an individual, firm, company, salesperson, partnership *or corporation*, trade group or association (emphasis added). See *Administrative Code §20-386 (1)*. Indeed, it has been held that a church was a “person” and an “owner” within the meaning of Administrative Code § 20-386[1]. See *San Sung Korean Meth. Church of New York v. Professional USA Constr. Corp.*, 4 Misc.3d 1006 (A), 2004 N.Y. Slip. Op. 50740 (U), *aff'd.* 14 A.D.3d 501, 789 N.Y.S.2d 65 (2nd Dept. 2005). Therefore, and contrary to respondents’ contentions, a corporate owner is protected by the licensing provisions of the Administrative Code so long as the building does not contain more than four residential units. Respondents reliance on *Jack A. Corcoran Marble Co., Inc. v Clark Const. Corp.*, 155 Misc.2d 49, 597 N.Y.S.2d 259 (App. Term 1st Dept. 1993) is misplaced since that contract concerned an unlicensed home improvement corporate subcontractor and a general contractor hired by the owner, as opposed to a corporate owner and a general contractor.

However, petitioners have failed to submit evidence that the premises is, at least in part, a residential structure with no more than four such units and that the work, at least partially, related to those units.

CONCLUSION

Accordingly, the application by petitioners must be denied with leave to renew upon proper papers. This constitutes the decision and order of the court.

J.S.C.