

**270 Greenwich St. Assoc. LLC v Daniello Carting  
Co. LLC**

2009 NY Slip Op 32458(U)

October 13, 2009

Supreme Court, New York County

Docket Number: 105378/09

Judge: Joan A. Madden

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

PRESENT: HON. JOAN A. MADDEN  
J.S. Justice

PART 11

270 Greenwich Street  
ASSOCIATED LLC, ET AL.

INDEX NO. 105378/09

MOTION DATE \_\_\_\_\_

- v -  
Daniello Canting Co,  
LLC

MOTION SEQ. NO. 1

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	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~~ *petition* is determined in accordance with the annexed decision, order and judgment.

**UNFILED 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 141B).

Dated: October 13, 2009

[Signature]  
**HON. JOAN A. MADDEN** C.C.  
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: 1AS PART 11

-----X  
270 GREENWICH STREET ASSOCIATES LLC,  
89 MURRAY STREET ASSOCIATES LLC, and  
101 WARREN STREET ASSOCIATES LLC,

INDEX NO. 105378/09

Petitioners

--against--

DANIELLO CARTING COMPANY LLC,

Respondent.  
-----X

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**JOAN A. MADDEN, J.:**

This is an application, brought pursuant to New York Lien Law § 19(6), for an order summarily discharging several mechanic's liens filed by respondent Daniello Carting Company LLC (Daniello) with the Clerk of the County of New York, each in the sum of \$234,045.42 against the real property described by Daniello as 270 Greenwich Street, 89 Murray Street, and 101 Warren Street, New York, New York. Petitioners argue that the liens are invalid, on the ground that the construction debris and waste removal services Daniello provided for a construction project at these locations do not constitute "lienable" work. Petitioners also argue that Daniello failed to apportion the mechanic's liens against the three property owners.

The notices of mechanic's lien allege that Daniello performed "construction debris removal services which were necessary to allow construction to proceed at the subject property." In support of their petition, petitioners submit an affidavit from Carlos R. Olivieri, Jr., a Senior Vice President of Edward J. Minskoff Equities, Inc., which managed the construction project at issue. Explaining that Daniello is a carting company that worked for the construction manager, HRH Construction, LLC (HRH), Olivieri contends that Daniello "merely accepted waste and/or

construction debris which was loaded into containers and/or dumpsters by HRH Laborers and subsequently removed from the Property.” Olivieri further contends that Daniello’s containers and/or dumpsters were not located on the construction site, but were located on a public street adjacent to the real property.

In opposition to the petition, Daniello submits an affidavit from its managing member, Rudolph Mancini, stating that Daniello entered into an agreement with HRH on or about August 5, 2006, for Daniello to provide construction debris and waste removal services to HRH in connection with the construction of three buildings at 270 Greenwich Street in Manhattan, a long-vacant city-owned lot in TriBeCa. Although the project involved the construction of three buildings, Mancini explains that HRH hired Daniello pursuant to a single contract governing the entire project, and there was no segregation of waste between the three buildings. Daniello’s proposal, a copy of which is annexed to Mancini’s affidavit, indicates that Daniello provided mini-containers, 20- and 30-cubic yard roll-off containers, and garbage trucks. Mancini alleges that Daniello carted away nearly 40,000 cubic yards of construction debris and waste from the construction site, using nearly 900 trucks.

Mancini explains that some of the roll-off containers were placed on the construction site, and others were placed on the adjacent public street. Mancini argues that for those on the street, since a municipal permit was required, the dumpster should be considered, for all purposes, as located on the construction site, as the contractor maintains full responsibility for it. According to Mancini, “by obtaining a dumpster permit, a contractor is permitted to temporarily expand the construction site beyond property lines to include the public street.” With regard to the Daniello trucks utilized at the site, Mancini asserts that they were ordinary garbage trucks that are loaded

by hand or from the mini-containers, and are backed onto the owner's property for loading.

Mancini avers that a laborer brings the mini-containers to the Daniello truck driver, who empties each container by loading the waste onto the truck, and returns the mini-container to the laborer to re-fill.

In reply, petitioners offer an additional affidavit from Olivieri, disputing that Daniello's garbage trucks were backed on to the construction site, and insisting that the trucks utilized a public street lane closed to ordinary traffic.

Section 3 of the Lien Law provides, *inter alia*, that any contractor who performs labor or furnishes material for the "improvement of real property" is entitled to a mechanic's lien equal to the value, or the agreed-on price, of all unpaid labor and materials. "Improvement" is defined in Lien Law § 2(4) as including "the demolition, erection, alteration or repair of any structure upon . . . any real property and any work done upon such property or materials furnished for its permanent improvement," and includes "the value of fuel and lubricants consumed by . . . motor vehicles owned, operated or controlled by . . . [a] subcontractor while engaged exclusively in the transportation of materials to or from the improvement." Section 23 of the Mechanics' Lien Law specifically directs that the statute "is to be liberally construed to secure the beneficial interests and purposes" for which it was intended, namely the protection of the class of people who perform services or supply material for the improvement of real property. Lien Law §23; *Giant Portland Cement Co. v State of New York*, 232 NY 395, 403 (1922); *Matter of Claudio Perfetto, Inc. v Waste Mgt. of New York, LLC*, 274 AD2d 389, 390 (2<sup>nd</sup> Dept 2000). At least one court has ruled that the blasting, demolition and removal of subterranean rock is all lienable work. *Consolidated Blasting Corp. v Colabella Bros.*, 10 Misc 2d 913 (Sup Ct, NY Co 1957).

Petitioners rely on the *Claudio Perfetto* case, in which the Second Department affirmed the discharge of a mechanic's lien filed by Waste Management of New York, LLC, because it merely "accepted the petitioner's construction debris and waste at one of its disposal facilities," and did not perform any of the "actual waste removal itself." 274 AD2d at 390. The instant case, however, is distinguishable on its facts from *Claudio Perfetto*. Here, Daniello did not simply accept construction debris at a waste disposal facility. Rather, it is undisputed that Daniello's drivers were actively involved in the waste removal process itself on the site of the construction project by unloading the mini-containers into garbage trucks, picking up and dropping off the roll-off containers, and operating motor vehicles to transport the waste to an appropriate disposal site. Undoubtedly this work performed by Daniello was an indispensable part of the construction process, and this formerly vacant city-owned lot could not have been improved in the absence of Daniello's services.

The fact that some of Daniello's equipment was situated in the adjacent public street is merely a consequence of the practicalities of construction in Manhattan, where the building site often encompasses the entire city block, and the public street is the only space available for such waste containers. Private construction companies must apply to the City to obtain permits which allow them to place waste containers on public streets, and the storage must be clearly delineated with barricades, fencing, railing or other appropriate safety devices (*see* Administrative Code of City of N.Y. § 19-123; RCNY Title 34, § 2-05). Even if the adjacent street is not a temporary part of the construction site, the location where the labor is performed is not necessarily dispositive. Indeed, some off-site construction services are entitled to the protection of the Lien Law, such as the drawings of an architect, engineer or surveyor. *See* Lien Law § 2 (4); *Chas. H.*

*Sells, Inc. v Chance Hills Joint Venture*, 163 Misc 2d 814 (Sup Ct, Westchester County 1995). In *Claudio Perfetto*, it was the "mere acceptance of construction debris or waste" at a disposal facility, rather than the "actual waste removal itself," that was found not to constitute lienable work. 274 AD2d at 390. Thus, since Daniello was engaged in the actual waste removal process is entitled to the benefits of the Lien Law.

Petitioners' second ground for invalidating the liens is also unpersuasive. The apportionment of labor and materials furnished by a contractor between two or more separately-owned tracts is only required where the labor or services are furnished under different transactions for distinct and separate pieces of real property. See *Empire Pile Driving Corp. v Hylan Sanitary Serv.*, 32 AD2d 563 (2<sup>nd</sup> Dept 1969). Where a lienor performs work on different tracts of land pursuant to a single contract, the law permits a lien to be filed against the entire tract. *Wolf v Schaefer*, 103 App Div 567, 571 (1<sup>st</sup> Dept 1905). Inasmuch as the three buildings were constructed as a single project and Daniello performed construction debris removal services for the project as a whole pursuant to a single agreement with HRH -- and the construction debris was not differentiated in any way amongst the three buildings or their corporate owners -- the failure to apportion the liens amongst the three petitioners or the separate buildings is not a fatal defect.

Accordingly, it is hereby

**ORDERED and ADJUDGED** that the petition is denied and the proceeding is dismissed.

Dated: October 13 2009

ENTER:

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*J.S.C.*