

Matter of Duce Constr. Corp. v Compact HVAC, Inc.
2009 NY Slip Op 32990(U)
November 18, 2009
Supreme Court, New York County
Docket Number: 110629/09
Judge: Marilyn Shafer
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARILYN SHAFER

PART 8

Index Number : 110629/2009
DUCE CONSTRUCTION CORP.
VS.
FOR AN ORDER DISCHARGING
SEQUENCE NUMBER : 001
MECHANICS LIEN

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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 *be denied*

present to attached Mem

FILED
NOV 18 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/7/09

MARILYN SHAFER
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 CITY OF NEW YORK
COUNTY OF NEW YORK: PART 8

FILED
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In the Matter of
DUCE CONSTRUCTION CORPORATION,

Petitioner-Contractor,

For An Order Discharging and/or Cancelling
Certain Mechanic's Liens filed against
Properties located in the City of New York,
County of New York, State of New York, and
Cancelling Undertakings made to Discharge
Liens

-against-

Index No.: 110629/09

COMPACT HVAC, INC. d/b/a CASTRO CO.,

Respondent-Lienor.

DECISION

-----x

MARILYN SHAFER, J.:

BACKGROUND

Petitioner Duce Construction Corporation (Duce) moves,
pursuant to section 19 (6) of the Lien Law, for an order
discharging and/or cancelling the mechanic's liens filed by
respondent Compact HVAC, Inc. d/b/a Castro Co. (Castro).

Between the summer of 2006 through the spring of 2008, Duce,
a general contractor, entered into a series of purchase orders
with Castro, a subcontractor, whereby Castro was to provide,
among other things, ductless HVAC units and controllers for
property located at 18 West 10th Street, New York, New York (10th
Street Property). The work being performed at the 10th Street
Property is undisputed to be a residential home improvement

project.

Duce alleges that, as the work progressed on the 10th Street Property, Castro became deficient in fulfilling some of its contractual obligations, and Duce informed Castro that it was in material breach of the contract. After being informed of Duce's position, Castro filed a mechanic's lien against the 10th Street Property, in the sum of \$23,023.96, in which the owner of the property is identified as "Hilda Hollyer, Peter Gordon Hollyer, Lysette Hollyer & Margaret Hollyer." According to the deed for the 10th Street Property (Petition Ex. B), the owner of the property from July, 1993, until February, 2009, was Howard Solomon. In January, 2009, the 10th Street Property was transferred, by deed of trust, from Howard Solomon to the Andrew Solomon 2009 Trust. Petition Ex. C. Allegedly, at no time was the 10th Street Property owned by the persons listed as the owners on the mechanic's lien.

Several months after the commencement of the 10th Street Property project, Duce entered into another series of purchase orders with Castro to provide labor and materials for a different home improvement project located at 1060 Fifth Avenue, Apt. 12A, New York, New York (Fifth Avenue Property). Duce allegedly found deficiencies with Castro's work in this project as well, and so informed Castro. Castro then filed a notice of mechanic's lien against the Fifth Avenue Property on November 21, 2008, in the

sum of \$10,565.00. Duce paid \$10,565.00 into the court on December 8, 2008, pursuant to section 20 of the Lien Law. Petition Ex. E.

It is undisputed that Castro never possessed a license to perform home improvement work.

In its opposition, Castro asserts that, as a subcontractor, it does not require a home improvement license to maintain an action on its contracts, and admits that, if the documents provided by Duce are legitimate, its mechanic's lien on the 10th Street Property is jurisdictionally defective in misidentifying the true owner of the property.

DISCUSSION

The misidentification of an owner on a mechanic's lien renders such lien jurisdictionally defective and void as a matter of law, and the lien must be summarily discharged. *Long Industries Construction Corp. v Appelaniz*, 298 AD2d 309 (1st Dept 2002); *Matter of Kleet Lumber Co. (DMC Management)*, 197 AD2d 576 (2d Dept 1993). Further, this lien was discharged when Duce paid the amount of the lien into the court. Consequently, the lien on the Fifth Avenue Property is discharged.

Under New York law, an unlicensed home improvement contractor cannot recover for breach of contract or quantum meruit, nor can it foreclose on a mechanic's lien. Administrative Code of the City of New York §§ 20-386-387; *B & F*

Building Corp. v Liebig, 76 NY2d 689 (1990); *Nicotra v Manger*, 64 AD3d 547 (2d Dept 2009); *JMT Brothers Realty, LLC v First Realty Builders, Inc.*, 51 AD3d 453 (1st Dept 2008).

Castro's argument that subcontractors need not be licensed to maintain suits based on home improvement work is without merit. Section 20-386 (5) of the Administrative Code defines "contractor" to include both prime contractors and subcontractors. *Chosen Construction Corp. v Syz*, 138 AD2d 284 (1st Dept 1988) (subcontractor required to plead the existence of a home improvement contractor license in order to maintain a lawsuit based on a breach of the subcontract).

Consequently, Castro may not foreclose on a mechanic's lien on either subject property because it does not possess a valid home improvement contractor license.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the mechanic's lien filed by lienor on January 16, 2009 against 18 West 10th Street, New York, New York, Block 00573, Lot 0033, in the amount of \$23,023.96 is discharged; and it is further

ORDERED that the mechanic's lien filed by lienor on November 21, 2008 against 1060 Fifth Avenue, Apt. 12A, New York, New York, Block 01499, Lot 0001, in the amount of \$10,565.00 is discharged; and it is further

ORDERED that the undertaking paid by petitioner to discharge the lien filed by lienor against 1060 Fifth Avenue, in the amount of \$10,652.99, held in Court Deposit in accordance with section 20 of the Lien Law is released; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

Dated: 11/7/09

ENTER:

Marilyn Shafer, J.S.C.

MARILYN SHAFER
J.S.C.

FILED
NOV 18 2009
NEW YORK
COUNTY CLERK'S OFFICE