

Matter of Third Chris LP v Unitec Ver-Tech EI.

2014 NY Slip Op 32344(U)

August 21, 2014

Supreme Court, New York County

Docket Number: 153378/14

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

THIRD CHRIS LP,

Petitioner,

Index No. 153378/14

-against-

DECISION/ORDER

UNITEC VER-TECH ELEVATOR,

Respondent.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Petition and Petition.....	<u>1</u>
Affidavit in Opposition.....	<u>2</u>
Notice of Cross-Motion.....	<u>3</u>
Affidavit in Opposition to Cross-Motion.....	<u>4</u>
Exhibits.....	<u>5</u>

Petitioner Third Chris LP (“Third Chris”) brings the instant petition for an Order pursuant to New York Lien Law § 19(6) discharging the mechanic’s lien filed by respondent Unitec Ver-Tech Elevator (“Unitec”) on the ground that the notice of lien fails to comply with certain provisions of Lien Law § 9. Unitec cross-moves for an Order granting it leave to serve and file an amended notice of lien. For the reasons set forth below, Unitec’s cross-motion is granted and the petition is denied.

The relevant facts are as follows. The instant action arises out of an elevator maintenance and repair project which was allegedly completed by respondent at the premises located at 533

Third Avenue, New York, New York (the “subject premises”), which is owned by petitioner. On or about March 17, 2014, respondent filed a notice of mechanics lien (the “Notice of Lien”) in the sum of \$6,711.03 against the subject premises and Third Chris LP as owner to secure a claim for materials and services allegedly provided in connection with the improvement of the subject premises. Petitioner now brings the instant petition pursuant to Lien Law § 19(6) discharging the Notice of Lien based on respondent’s failure to comply with the requirements of Lien Law § 9. Specifically, petitioner asserts that the Notice of Lien is defective on the ground that (1) the lienor listed in the Notice of Lien, Unitec Ver-Tech Elevator, is not a registered corporation and thus, lacks standing to file the Notice of Lien; (2) the name of the company listed in the Notice of Lien, 533 3rd Ave, LLC, to which respondent alleges to have furnished the materials and labor, does not exist; and (3) the Notice of Lien fails to describe the labor performed or the materials furnished with the required specificity. Respondent cross-moves for an Order pursuant to Lien Law § 12-a granting it leave to serve and file an amended notice of lien.

“A valid lien is created by filing a notice which substantially complies with the provisions of section 9 of the Lien Law.” *Corina Associates, Inc. v. McManus, Longe, Brockwehl, Inc.*, 39 A.D.2d 613, 614 (3d Dept 1972). “The failure in a material requirement of section 9 voids the lien.” *Id.* “One of the main purposes of Lien Law § 9's notice is to provide information to the owner so that ‘he may, upon inquiry, ascertain whether or not the material has been actually furnished and the services have been actually rendered, and the value thereof.’” *5 Bros., Inc. v. D.C.M. of N.Y., LLC*, 38 Misc.3d 1235 *3 (Sup. Ct. Kings County 2013)(citing *Matter of Lycee Francais de NY v. Calagna*, 26 Misc.2d 374, 377 (Sup. Ct. N.Y. County 1960)). The provisions of Lien Law § 9 are “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.” Lien Law § 23. Pursuant to Lien Law § 19(6), an interested party may move to discharge a lien for failure to comply with Lien Law § 9's requirements. However, rather than discharging a lien, “the court may...make an order amending a notice of lien...nunc pro tunc” unless an existing lienor, mortgagee or purchaser in good faith will be prejudiced by such amendment. Lien Law § 12-a.

As an initial matter, that portion of the petition which seeks to discharge the Notice of Lien on the ground that it fails to comply with Lien Law § 9(1) is denied as the defect is not material. Pursuant to Lien Law § 9(1), the notice of lien shall state “[t]he name and residence of the lienor; and if the lienor is a partnership or a corporation, the business address of such firm, or corporation....” Respondent’s Notice of Lien states “[t]he lienor is Unitec Ver-Tech Elevator, a corporation whose business address is 97-20 99th Street, Ozone Park, New York 11416.”

Although it is undisputed that Unitec Ver-Tech Elevator is not the correct name of the registered corporation, respondent has affirmed that the correct name of the lienor is Alliance Elevator Company d/b/a Ver-Tech Elevator, a Delaware corporation duly registered to conduct business in New York under the assumed name Ver-Tech Elevator and that the address stated in the Notice of Lien is its correct business address. It is well-settled that a defect in a lienor’s name may be considered “a misdescription and not a jurisdictional defect” if adequate notice was given to the owner of the lienor’s identity. *Corina Associates, Inc.*, 39 A.D.2d at 614 (“While the name Corina Construction Company was not the true legal entity which did the work, the filing of the notice of lien in that name gave adequate notice of the lienor’s identity to all concerned. The notice described the lienor as a corporation, listed its business address....”) Here, the Notice of

Lien gives the proper notice to petitioner in that it described the lienor as a corporation and listed its correct business address.

Additionally, that portion of the petition which seeks to discharge the Notice of Lien on the ground that it fails to comply with Lien Law § 9(3) is denied as the defect is not material. Pursuant to Lien Law § 9(3), the notice of lien shall state “[t]he name of the person by whom the lienor was employed, or to whom he furnished or is to furnish materials....” Respondent’s Notice of Lien states “[t]he lienor furnished materials and labor to 533 3rd Ave. LLC at 533 3rd Avenue, New York, New York 10016.” It is undisputed that 533 3rd Ave. LLC is not the correct name of the entity which employed respondent or to which respondent furnished materials and labor. However, a lien may still be valid even if the name of the employer is omitted or incorrectly listed if “the name of the person by whom the lienor was employed sufficiently appears in the notice of lien.” *Matter of Arbeit v. Jillar Realty Corp.*, 29 Misc.2d 94, 96 (Sup. Ct. Queens County 1961). Here, the court finds that as the Notice of Lien states that “the Owner of the real property [subject to the lien] is Third Chris, L.P.,” the defect is not material.

Finally, that portion of the petition which seeks to discharge the Notice of Lien on the ground that it fails to comply with Lien Law § 9(4) is denied as the court finds that the Notice of Lien is not defective in this regard. Pursuant to Lien Law § 9(4), the notice of lien shall state “[t]he labor performed or materials furnished and the agreed price or value thereof....” Respondent’s Notice of Lien states “[t]he material and labor furnished were elevator maintenance and repair, together with related materials” and “[t]he agreed price of the materials and labor was \$6,711.03.” Petitioner’s assertion that such description is insufficient pursuant to the requirements of Lien Law § 9(4) is without merit as it has failed to provide a basis for such

