

555 Partners LP v Unitec Ver-Tech EI.

2014 NY Slip Op 32700(U)

September 18, 2014

Supreme Court, New York County

Docket Number: 153434/14

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
555 PARTNERS LP,

Petitioner,

Index No. 153434/14

-against-

UNITEC VER-TECH ELEVATOR,

**Decision, Order &
Judgment**

Respondent.
-----X

JOAN B. LOBIS, J.S.C.:

In this special proceeding, 555 Partners LP¹ (“Partners”) petitions the Court to discharge Respondent Unitec Ver-Tech Elevator’s (“Ver-Tech”) notice of mechanics lien for failing to comply with provisions of Section 9 of the New York Lien Law. Ver-Tech opposes the petition, and cross-moves pursuant to Section 12-a of the New York Lien Law for an order granting it leave to serve and filed an amended lien notice *nunc pro tunc*. Partners opposes the cross-motion. For the reasons stated below, the cross-motion is granted, and the petition is denied.

On March 18, 2014, Ver-Tech filed a notice of mechanics lien in the sum of \$6,268.15 against 555 West 156th Street, New York, NY. In the notice, Ver-Tech described the lienor as “Unitec Ver-Tech Elevator, a corporation.” Ver-Tech lists the owner of 555 West 156th Street as “555 Partners LP.” It states that the materials and labor were provided to “555 W 156 St. LLC.” It also states that “[t]he materials and labor furnished were elevator maintenance and repair, together with related materials” for \$6,268.15.

¹ In its papers, Petitioner also uses the name 149th Partners LP.

Partners argues that the notice is defective on several grounds. Petitioner argues that Ver-Tech is an unregistered corporation and, therefore, it lacks standing to file the notice of lien. Partners contends that Ver-Tech incorrectly states that it provided materials or labor to 555 West 156 St. LLC.² Petitioner also claims that the notice of lien fails to describe the labor performed or materials furnished with enough specificity. Partners argues that these defects are fatal and requests that the notice of lien be vacated.

Ver-Tech opposes the petition. It claims that the correct name of the lienor is Alliance Elevator Company, a Delaware corporation duly registered to conduct business in New York under the name “Ver-Tech Elevator.” It attaches records from the New York Department of State as evidence of its status. Respondent asserts that 555 Partners LP is the owner of 555 West 156th Street, New York, NY. It concedes that there are two errors in the notice, the inaccurate lienor name and inaccurate name of the limited liability corporation that received labor and materials from Respondent. Ver-Tech contends that these errors are not a substantial defects, and that Respondent correctly provided the correct business address of the lienor, the correct owner’s name, property address, and price of materials and labor. Ver-Tech contends that it has fulfilled the requirements of the New York Lien Law by describing the materials and labor furnished as “elevator maintenance and repairs, together with related materials.”

Ver-Tech maintains that it has substantially complied with the New York Lien Law, and, pursuant to Section 23 of the New York Lien Law, substantial compliance with its provisions

² Petitioner states that “[t]he Court should note that the person to whom the lienor allegedly provided materials and labor was “460 West 149 LLC.” The entity . . . simply does not exist.” Presumably, Petitioner meant to state that materials were allegedly provided to 555 West 156 St. LLC, and that this entity does not exist.

shall be sufficient for the validity of a lien and to give jurisdiction to the courts. Ver-Tech cross-moves for an order granting it leave to serve and filed an amended lien notice *nunc pro tunc*.

In opposition to the cross-motion, Petitioner claims that a notice of lien cannot be amended where there are multiple defects. It claims that if there is a substantial defect, a notice of lien cannot be amended either. It contends that Respondent's notice of lien has multiple defects and that the defects are substantial.

Section 9 of the New York Lien Law establishes the requirements for the content of a notice of lien. It requires that a notice of lien provide the "name and residence of the lienor, and if the lienor is a partnership or a corporation, the business address of such firm, or corporation, the names of partners and principal place of business, and if a foreign corporation, its principle place of business with the state." *Id.* The notice must state the "name of the owner of the real property" and "name of the person by whom the lienor was employed, or to whom he furnished or is to furnish materials[.]" *Id.* The notice should identify the "labor performed or materials furnished and the agreed price or value thereof[.]" *Id.* Section 23 of the New York Lien Law states that "[t]his 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." Section 12-a of the New York Lien Law allows for an amendment to a notice of lien, but it "presupposes the existence of a valid lien and may not be construed to revive an invalid notice of lien." Northeast Restoration Corp. v. K & J Const. Co., L.P., 304 A.D.2d 306, 307 (1st Dep't 2003)(citing Atlas Tile and Marble Works, Inc., and Atamco Inc., v. S & H 88th Street Associates, 191 A.D.2d 247, 248 (1st Dep't 1993).

Ver-Tech concedes that there are defects in notice of lien, in particular the lienor's name and the name of the limited liability corporation that received labor and material from the lienor. As a threshold matter, the Court first turns to whether a notice of lien may be amended when there are multiple defects. Petitioner primarily relies on two cases Diamond Architecturals v. EFCO Corporation, 179 A.D.2d 420 (1st Dep't 1992) and Empire Pile Driving Corporation v. Hylan Sanitary Service, 32 A.D.2d 563 (2d Dep't 1969). In Diamond Architecturals the First Department did not permit amendment of a notice of lien because "inasmuch as the notice at issue contains more than one defect, it cannot be said that there has been substantial compliance warranting such an amendment." Id. at 421 (citing Empire Pile Driving Corp., 32 A.D.2d at 563). The First Department did not give a blanket standard that any notice of lien with multiple defects cannot be amended. Furthermore, the notice of lien in Diamond suffered from multiple substantial defects in that it failed to "specify the correct name of the owner of the real property . . . as well as a correct block and lot description in that it omits the names of the individual unit owners and the fact that each unit had previously been given an individual lot designation." Diamond Architecturals, 179 A.D.2d at 421.

Similarly, in Empire Pile, the Second Department did not allow for an amendment of a notice of lien because "under these circumstances" there was no substantial compliance due to multiple defects including failure to state "the labor performed or materials furnished . . . the amount unpaid to the lienor for such labor or materials . . . the exact 'time when the first last times of work were performed and materials furnished' In addition, the notice was not verified [.]'" Empire Pile Driving Corp., 32 A.D.2d at 563. These cases, and others cited by Petitioner in its

papers, are distinguishable from the current matter in that they involved multiple substantial defects, many of which individually would result in an invalid notice of lien.

Though the presence of multiple defects may indicate that a lienor has not substantially complied with a notice of lien, in each above case the Appellate Division took into account the circumstances of the notice of lien at issue in determining whether an amendment could be made. Indeed, the First Department has allowed for an amendment when there are multiple minor defects, such as failing to include both the labor performed and the agreed price or value of the labor. See EFCO Corp. v. Helena Assoc. LLC, 45 A.D.3d 399 (1st Dep't 2007).

The Court now turns to the circumstances of the notice of lien at issue in this matter. The first defect Petitioner alleges is that the lienor in the notice of lien is not the actual lienor or a registered corporation. Respondent Ver-Tech avers that it is both the lienor and a corporation, but it did not use its true legal name in the notice. If a corporation files a notice of lien in which it does not use its true legal name but gives "adequate notice of the lienor's identity to all concerned [,]" the notice can be amended to reflect the correct name of the corporation. See Fibernet Telecom Group, Inc. v. East Coast Optical Serv., 760 N.Y.S.2d 621, 623 (1st Dep't 2002)(citing Corina Assocs., Inc. v. McManus, Longe, Brockwehl, Inc., 39 A.D.2d 613 (3d Dep't 1972)). This particular defect can be amended as the difference between "Unitec Ver-Tech Elevator" and "Ver-Tech Elevator" is curable. See Manniello v. Ghadimi, 279 A.D.2d 460, 461 (2d Dep't 2001).

Next, the Court turns to Petitioner's claim that Ver-Tech did not identify the labor performed or materials furnished and agreed price or value. The notice of lien states that Ver-

Tech provided “elevator maintenance and repairs, together with related materials” and includes the amount unpaid to the lienor. Petitioner’s claim that Ver-Tech failed to comply with Section 9 of the New York Lien Law in this regard is unpersuasive.

Ver-Tech concedes that it incorrectly stated that 555 W 156 St. LLC was the recipient of materials and labor. Section 9-7 of the New York Lien Law, however, provides that “a failure to state the name of the true owner or contractor, or a misdescription of the true owner, shall not affect the validity of the lien.” In this case, where the owner is correctly named but then described incorrectly later in the notice of lien, would not, pursuant to the New York Lien Law, affect the validity of the lien.

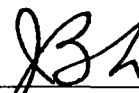
The remaining sections of the notice of lien are without defect. Ver-Tech provided the exact address where it furnished its materials and labor, the correct name of the owner of the property, the owner’s address, and the amount agreed upon and owed for materials and labor. Amendment of the two minor defects in this case – the use of name “Unitec Ver-Tech Elevator” instead of the corporation’s true legal name and error in describing the LLC that 555 Partners LP used to receive the labor from Respondent – does not render the notice of lien invalid. Since there are no other defects in an otherwise detailed notice of lien, the Court concludes that the defects are amendable pursuant to Section 12-a of the New York Lien Law. EFCO Corp., 45 A.D.3d at 399. Accordingly, it is

ORDERED that the cross-motion is granted, and Respondent is granted leave to serve and file an amended lien notice within 20 days of receiving this order, which will be amended *nunc pro tunc*; and it is further

ADJUDGED that the petition is denied.

Dated: September 18, 2014

ENTER:



JOAN B. LOBIS, J.S.C.