

Legacy Bldrs./Devs. Corp. v 622 Third Ave. Co. LLC
2014 NY Slip Op 33300(U)
December 16, 2014
Supreme Court, New York County
Docket Number: 156102/13
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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LEGACY BUILDERS/DEVELOPERS CORP.,

Plaintiff,

Index No. 156102/13

-against-

DECISION/ORDER

622 THIRD AVENUE COMPANY LLC, AMICK
CARPENTRY CORP. a/k/a AMICK CONSTRUCTION
CORP., CORPORATE WOODWORKING, INC.,
DEPARTMENT OF TRANSPORTATION OF THE
CITY OF NEW YORK and "JOHN DOE 1" through
"JOHN DOE 10" the fictitious names being those
individuals and/or entities unknown to plaintiff and
having or claiming an interest in or lien upon 622
Third Avenue, New York, New York (the "Property"),

Defendants.

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HON. CYNTHIA S. 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 Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion and Affidavits Annexed.....	<u>2,3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

Plaintiff Legacy Builders/Developers Corp. ("Legacy Builders") commenced the instant
action against defendants 622 Third Avenue Company LLC ("622"), Amick Carpentry Corp. a/k/a
Amick Construction Corp. ("Amick"), Corporate Woodworking, Inc. ("Woodworking"),
Department of Transportation of the City of New York ("DOT") and "John Doe 1" through "John
Doe 10" alleging causes of action for breach of contract, unjust enrichment and to foreclose on a

mechanic's lien. Plaintiff now moves for an Order pursuant to CPLR § 3212 granting it summary judgment on its breach of contract claim and foreclosure of its lien, plus attorney's fees and costs. For the reasons set forth below, plaintiff's motion is denied.

The relevant facts are as follows. 622 is the owner of the real property located at 622 Third Avenue, New York, New York, Block 1295, Lot 33 (the "Property"). The Property is managed by Cohen Brothers Realty Corporation ("CBRC"), a private real estate development and management firm. On or about February 10, 2012, Legacy Builders entered into an agreement with 622 whereby Legacy Builders agreed to construct the interior fit out of a new office suite on the 34th floor of the Property (the "Agreement"). The agreed price of the work was \$17,000, which has been paid. However, plaintiff alleges that 622 later requested that it perform additional work in the amount of \$33,435 (the "Additional Work"), which it completed but did not receive payment for. 622 does not dispute that it has not paid plaintiff for the Additional Work. However, 622 contends that it contracted with plaintiff for additional work in the amount of \$15,135, not \$33,435. Specifically, 622 alleges that it entered into a contract with plaintiff for work on the 32nd and 33rd floor bathrooms for which plaintiff was to be paid \$10,325 and for work on the 2nd floor of the Property for the amount of \$4,810.00. 622 further contends that it has not paid plaintiff for the Additional Work as the work was of poor quality and was not completed.

On or about December 14, 2012, within eight months after furnishing the last items of material and labor, Legacy Builders filed a Notice of Mechanic's Lien (the "Lien") on the Property in the amount of \$33,435. On that same date, Legacy Builders served a copy of the Lien on 622 by mailing it regular mail and certified mail to 622's last known address and the Affidavit of Service of the Lien was filed with the New York County Clerk. Legacy Builders alleges that the Lien has not been paid, waived, cancelled or discharged.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Id.*

In the present case, plaintiff’s motion for summary judgment on its first cause of action for breach of contract is denied as there remains a material issue of fact as to the terms of the contract. While it is undisputed that the parties entered into a contract for the Additional Work, the record contains conflicting evidence as to the agreed upon price for the Additional Work. According to the affidavit of plaintiff’s Chief Financial Officer Harry Zapiti “at the specific request of [622], Legacy performed [A]dditional Work in the amount of \$33,435.” However, this statement is directly refuted by the affidavit of 622’s property manager, Jillian Greene, who attests that plaintiff was to be paid a total of \$15,135 for the Additional Work. These conflicting affidavits clearly create an issue of fact precluding summary judgment.

Similarly, the portion of plaintiff’s motion seeking to foreclose on its mechanic’s lien is also denied as there remains a material issue of fact as to the amount of the lien. “To establish a right to enforce a mechanic’s lien, the contractor . . . must make a *prima facie* case that the lien is valid, and that it is entitled to the amount asserted in the lien.” *Ruckle and Guarino, Inc. v. Hangan*, 49 A.D.3d 267, 267 (1st Dept 2008). Here, as established above, summary judgment is inappropriate as there remains a material issue of fact as to whether plaintiff is entitled to the amount asserted in the lien. Thus, plaintiff is not entitled to summary judgment at this time.

Accordingly, plaintiff's motion is denied in its entirety. This constitutes the decision and order of the court.

Dated: 12/16/14

Enter: CK
J.S.C.

CYNTHIA S. KERN
J.S.C.