

National Recovery Sys. v Aragon, LLC
2016 NY Slip Op 30620(U)
April 6, 2016
Supreme Court, New York County
Docket Number: 650666/2013
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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NATIONAL RECOVERY SYSTEMS, as assignee of
STATEWIDE DEMOLITION CORP., Plaintiffs/
Counterclaim Defendants

v

Index No. 650666/2013
Action No. 1

ARAGON, LLC, Defendant, CREDIT SUISSE
SECURITIES (USA), LLC, Defendant/Counterclaim
Plaintiff, and BP 599 LEXINGTON AVENUE, LLC,
Defendant.

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KABACK ENTERPRISES, INC., Plaintiff,

v

Index No. 650407/2013
Action No. 2

ARAGON, LLC, BP 599 LEXINGTON AVENUE, LLC,
ALEX GETELMAN, and JOHN DOE,

Defendants.

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J.P. PHILLIPS, INC., Plaintiff/Counterclaim
Defendant,

v

Index No. 159884/2013
Action No. 3

ARAGON, LLC, Defendant/Cross Claim Defendant,
1 MADISON OFFICE FEE, LLC, CREDIT SUISSE
SECURITIES (USA), LLC, Defendants/Counterclaim
Plaintiffs/Cross Claim Plaintiffs, BP 599
LEXINGTON AVENUE, LLC, BOSTON PROPERTIES, INC.,
THE STATE WHITEHALL COMPANY, and RUDIN
MANAGEMENT CO., INC., Defendants; NATIONAL
RECOVERY SYSTEMS, as assignee of STATEWIDE
DEMOLITION CORP., M&A METALS, INC., and DOES 1
through 100, Additional Counterclaim Defendants.

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BANNON, J.:

Defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES

(USA), LLC, and 1 MADISON OFFICE FEE, LLC (the CSS defendants), own certain commercial real property. The CSS defendants entered into a construction contract with general contractor ARAGON, LLC (ARAGON), to demolish and renovate the real property, and agreed to pay ARAGON the sum of approximately \$2 million. This sum was not financed but, instead, the CSS defendants funded the project directly from their own assets. The CSS defendants paid ARAGON all but \$20,418.37 of the obligation arising under the construction contract. The construction contract provided that "[n]o subcontractor, vendor or other third party shall be, or considered as, a third-party beneficiary of, or entitled to assert any right under, this Agreement."

Various subcontractors remained unpaid by ARAGON. One of ARAGON's subcontractors, plaintiff/counterclaim defendant J.P. PHILLIPS, INC. (JPP), filed a mechanic's lien in the sum of \$173,254.00 against the subject real property in connection with construction services that it had rendered pursuant to its subcontract with ARAGON. Another of ARAGON'S subcontractors--- plaintiff/counterclaim defendant NATIONAL RECOVERY SYSTEMS (NRS), as assignee of STATEWIDE DEMOLITION CORP. (STATEWIDE)---did not file a mechanic's lien against the subject real property, but instead commenced Action No. 1 against the CSS defendants, among others, alleging that the CSS defendants were unjustly enriched by demolition services performed by STATEWIDE pursuant to the

subcontract. JPP thereafter commenced Action No. 3 against the CSS defendants, among others, seeking to foreclose the mechanic's lien that it had filed. JPP further asserted that the CSS defendants were unjustly enriched by the benefit they received as a consequence of the construction work performed by JPP, and that JPP was entitled to recover "construction trust" funds that the CSS defendants allegedly misappropriated from the proceeds of loans purportedly used to finance the construction project. The CSS defendants asserted a counterclaim in Action No. 3, in the nature of interpleader, naming JPP as a counterclaim defendant and NRS as an additional counterclaim defendant (see CPLR 3019[a]), and requested that it be permitted to deposit into court the sum of \$20,418.37, less the disbursements and attorneys' fees they incurred in litigating this matter, in full discharge of its obligations under JPP's mechanic's lien and any obligation it may have owed to NRS.

In an order dated February 26, 2015, this court directed that Action Nos. 1 and 3 be consolidated with each other and with another related action to the extent that they be joined for discovery and trial. The CSS defendants thereafter moved for summary judgment on their counterclaim, and pursuant to CPLR 1601(f), seeking permission to deposit, into court, the sum of \$20,418.37, less a setoff representing an award of disbursements and costs, including attorney's fees they incurred in litigating

the matters. They thus sought a full discharge from liability to JPP and NRS. JPP opposed the motion, and cross-moved for summary judgment on its third cause of action, which was to foreclose its mechanic's lien. The CSS defendants opposed the cross motion. None of the other parties to the actions opposed the motion or cross motion.

The CSS defendants established, prima facie, that ARAGON was the general contractor for the subject demolition and construction work, that the CSS defendants were the owners of the real property at which the work was performed, that only \$20,418.37 remained unpaid to ARAGON pursuant to the construction contract, that JPP and STATEWIDE were subcontractors of ARAGON's, and that neither JPP nor STATEWIDE entered into an independent contract with the CSS defendants or were in a relationship approaching privity with them. Contrary to JPP's contention, the proof submitted by the CSS defendants, consisting of an affidavit of a corporate director with knowledge of the subject transactions, along with authenticated documents both demonstrating the existence of the construction contract between the CSS defendants and ARAGON and memorializing the payments made under the contract and the amount remaining unpaid, were sufficient to make a prima facie showing of the CSS defendants' entitlement to judgment as a matter of law. In opposition to the showing made by the CSS defendants, JPP failed to raise a triable issue of fact.

Lien Law § 4(1) limits an owner's liability under a mechanic's lien to the value or agreed price of the labor and materials remaining unpaid pursuant to the construction agreement. See West-Fair Elec. Contrs. v Aetna Cas. & Sur. Co., 87 NY2d 148, 157 (1995). Here, there is no dispute as to the agreed upon contractual obligation that remains unpaid to ARAGON. Moreover, contrary to JPP's contention, the CSS defendants did not finance the costs of the project and, thus, the money that they allocated to pay ARAGON cannot be considered "construction trust" funds within the meaning of Lien Law § 70 since that money was not "received by an owner for or in connection with an improvement of real property in this state." Lien Law § 70(1). Hence, there is no merit to JPP's argument that the CSS defendants are liable to JPP to the full extent of the mechanic's lien, based on an alleged misappropriation of such construction trust funds. Finally, the CSS defendants correctly contend that no cause of action to recover damages for unjust enrichment lies in favor of ARAGON's subcontractors against the CSS defendants, as owners. "[A] property owner who contracts with a general contractor does not become liable to a subcontractor on a quasi contract theory unless it expressly consents to pay for the subcontractor's performance.'" Sears Ready-Mix, Ltd., v Lighthouse Marina, Inc., 127 AD3d 845, 846 (2d Dept 2015), quoting Perma Pave Contr. Corp. v Paerdegat Boat & Racquet Club, 156 AD2d 550, 551 (2d Dept 1989). Since the

construction agreement here expressly negated any obligations to third parties that the CSS defendants might otherwise have assumed (see A.H.A. Gen. Constr., Inc. v Edelman Partnership, 291 AD2d 239, 239-240 [1st Dept 2002]), and JPP failed to raise a triable issue of fact in opposition to the CSS defendants' prima facie showing that the work performed by JPP was for the benefit of ARAGON rather than the CSS defendants (see generally Metropolitan Elec. Mfg. Co. v Herbert Constr. Co., 183 AD2d 758, 758 [2d Dept 1992]), such express consent was absent here.

Accordingly, the CSS defendants are entitled to summary judgment on their counterclaim in the nature of interpleader and to a discharge of all liability pursuant to CPLR 1006(f). Since the disposition of these issues defeats the remaining causes of action asserted by JPP against the CSS defendants and the cause of action asserted by NRS against the CSS defendants, the court searches the record and awards summary judgment to the CSS defendants dismissing those causes of action. See CPLR 3212(b).

The CSS defendants correctly assert that the court has the authority pursuant to CPLR 1006(f) to "impose such terms relating to payment of expenses, costs and disbursements as may be just and which may be charged against the subject matter of the action," including a reasonable attorney's fee. See Mahon, Mahon, Kerins & O'Brien, LLC v Moskoff, 85 AD3d 738, 739 (2d Dept 2011). The court finds that, under the circumstances of this case, the CSS

defendants are entitled to an award of expenses, costs, and disbursements, including a reasonable attorney's fee, that they incurred in answering the complaint, asserting their counterclaim, moving for permission to deposit the subject stake with the court, for summary judgment, and for a discharge of their obligations, and in opposing JPP's cross motion. The CSS defendants are thus directed to submit, to the court, all bills and invoices kept in the usual course of business by them or their attorneys evincing these costs, expenses, disbursements, and legal fees, subject to the scheduling of a hearing, if necessary, and a determination of that application thereafter. After that determination is made, the CSS defendants will be directed to deposit the subject stake, less the award of expenses, costs, and disbursements, with the court. Accordingly, that branch of JPP's cross motion which was for summary judgment on its third cause of action, which was to foreclose its mechanic's lien, may only be granted to the extent that it is entitled to foreclose on the \$20,418.37 stake described by the CSS defendants, less any award of disbursements and attorney's fees which may be made by this court.

Since the parties other than the CSS defendants have made claims against each other that were not the subject of the instant motion and cross motion, and are not affected thereby, those claims are severed, and shall proceed apart from the claims asserted by and against the CSS defendants. See CPLR 3212(e)(i).

Accordingly, it is

ORDERED that the motion of defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, for summary judgment on their counterclaim in the nature of interpleader and pursuant to CPLR 1006(f) discharging them from liability to all plaintiffs/counterclaim defendants and for an award of disbursements and an attorney's fee is granted; and it is further,

ORDERED that the cross motion of plaintiff/counterclaim defendant J.P. PHILLIPS, INC., for summary judgment on its third cause of action is granted only to the extent that it is entitled to foreclose upon the interpleader stake to be deposited by the defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, which shall be calculated after deducting therefrom any costs, expenses, and disbursements, including a reasonable attorney's fee, which may be awarded to defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, and the cross motion is otherwise denied; and it is further,

ORDERED that, upon searching the record, summary judgment is awarded to defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, dismissing the second and fourth causes of action insofar asserted against them in Action No. 3 by the plaintiff/counterclaim defendant J.P.

PHILLIPS, INC., and dismissing the complaint insofar as asserted against them in Action No. 1 by the plaintiff/counterclaim defendant NATIONAL RECOVERY SYSTEMS, as assignee of STATEWIDE DEMOLITION CORP.; and it is further,

ORDERED that the defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, are directed to submit, to the court, all bills and invoices kept in the usual course of business by them or their attorneys evincing costs, expenses, disbursements, and legal fees, incurred in defending these actions and prosecuting their counterclaim, subject to the scheduling of a hearing on their application for an award of an attorney's fee, if necessary, and a determination of that application thereafter; and it is further,

ORDERED that the remaining causes of action are severed; and it is further,


ORDERED that, upon the determination of the application of the defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, for an award of disbursements and an attorney's fee, the deposit with the court of the interpleader stake in the appropriate amount thereafter, and the filing of proof of such deposit, the Clerk of the court shall enter judgment dismissing all causes of action and claims asserted against the defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, and in favor of the defendants/counterclaim plaintiffs CREDIT SUISSE SECURITIES (USA), LLC, and 1 MADISON OFFICE FEE, LLC, on their counterclaim in

the nature of interpleader discharging them from all liability; and
it is further,

ORDERED that the remaining parties are directed to appear for
a status conference on May 12, 2016, at 9:30 a.m. at 111 Centre
Street, Room 1127B, New York, NY, as previously set forth in a
compliance conference order dated January 21, 2016.

Dated: April 16, 2016

ENTER:



J.S.C.
HON. NANCY M. BANNON