

**Matter of Board of Mgrs. of the St. Tropez
Condominium v Central Constr. Mgt., LLC**

2018 NY Slip Op 32223(U)

September 11, 2018

Supreme Court, New York County

Docket Number: 157935/2018

Judge: Debra A. James

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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**

PRESENT: HON. DEBRA A. JAMES **PART** **IAS MOTION 59EFM**

Justice

-----X

INDEX NO. 157935/2018

In the Matter of the Application of:

MOTION DATE 09/11/2018

BOARD OF MANAGERS OF THE ST. TROPEZ CONDOMINIUM,
and TROPEZ LEASEHOLD, LLC,

MOTION SEQ. NO. 001

Petitioners,

- v -

for an Order Summarily Discharging of Record a Notice
of Lien dated July 20, 2018, filed

DECISION AND ORDER

CENTRAL CONSTRUCTION MANAGEMENT, LLC,

Respondent.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 13, 14, 15, 16,
17, 18, 19, 20, 21, 22

were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the Petition of movants to cancel
and vacate summarily in accordance with Lien Law § 19(6) the
Notice of Mechanic's Lien on the property known as 340 East 64th
Street, New York, New York, filed on July 20, 2018 with the New
York County Clerk's Office is GRANTED; and it is further

ORDERED that upon a filing of a copy of this order with
notice of entry and proof of service, with the County Clerk of
New York County, such Clerk is directed to note the DISCHARGE of
such Notice of Mechanic's Lien on the land records; and it is
further

ORDERED that to the extent that movants seek an award of reasonable attorneys' fees, incurred in bringing this special proceeding, such motion is DENIED; and it is further

ORDERED that the Clerk shall enter judgment as aforesaid with costs and disbursements to be calculated by the Clerk upon submission of an appropriate bill of costs.

DECISION

As argued by petitioners, Lien Law § 339-1 (2) provides, in pertinent part:

"Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to article two of the lien law against the unit of any unit owner not expressly consenting to or requesting the same, except in the case of emergency repairs. No labor performed on or materials furnished to the common elements shall be the basis for a lien thereon, but all common charges received and to be received by the board of managers, and the right to receive such funds, shall constitute trust funds for the purpose of paying the cost of such labor or materials performed or furnished at the express request or with the consent of the manager, managing agent or board of managers, and the same shall be expended first for such purpose before expending any part of the same for any other purpose."

Furthermore, Marc H. Schneider and Dan M. Blumenthal, McKinney's Practice Commentaries, Real Property Law § 339-1 (2018), state:

"The purpose of RPL § 339-1 is to prevent a situation whereby the common elements can be encumbered by a mechanic's lien or otherwise encumbered without the express unanimous consent of the unit owners. RPL § 339-1(1) concerns situations such as Condominium loans,

which are permitted under RPL § 339-jj and requires that if, for example, the Board of Managers is going to encumber the common areas of the Condominium as collateral for the loan, the Board of Managers must obtain consent of all of the unit owners. RPL § 339-1 (2) prohibits mechanic's liens being placed on Condominium common areas by contractors performing work for the Condominium or unit owners. See Country Village Heights Condominium (Group I) v. Mario Bonito, Inc., 79 Misc.2d 1088, 1093, 363 N.Y.S.2d 501 (Sup. Ct. Rockland Co. 1975).

The Legislature, in enacting § 339-1, has chosen to distinguish between the rights of those performing labor on or furnishing materials to individual unit owners in a condominium, and the rights of those performing labor on or furnishing materials to the common elements of a condominium. In the case of labor performed or materials furnished to any unit owner, there can be no lien unless the unit owner expressly consents to the lien or unless the lien is for emergency repairs to such unit. Matter of Myrtle Owner LLC (Ro-Sal Plumbing & Heating Inc.), 32 Misc.3d 1221(A), 934 N.Y.S.2d 35 (Sup. Ct. Kings Co. 2011).

On the other hand, **if a unit owner-controlled Board of Managers approves of work to be completed on the common areas, even though the contractor is not permitted to place a lien on the common areas if the Condominium fails to pay for the work, RPL § 339-1(2) provides that all common charges are considered trust funds for purposes of the monies due until same are paid.** Northeast Restoration Corp. v. K & J Const. Co., L.P., 304 A.D.2d 306, 307, 757 N.Y.S.2d 542, 544 (1st Dept. 2003); Northeast Restoration Corp. v. K & J Const. Co., L.P., 4 Misc.3d 197, 201, 776 N.Y.S.2d 780, 783 (Sup. Ct. N.Y. Co. 2004)." (Emphasis supplied.)

However, petitioners present no authority for an award of attorneys' fees. See Tully Const. Co. Inc. v United Minerals Inc., 221 AD2d 697 (1st Dept. 1995).

9/11/2018
DATE


DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED		<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE