

Supreme Gen. Contr., Inc. v Warman
2018 NY Slip Op 32737(U)
July 9, 2018
Supreme Court, Kings County
Docket Number: 505270/17
Judge: Johnny Lee Baynes
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DUPLICATE ORIGINAL

10/22 Conf #

At an IAS Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse thereof located at 360 Adams Street, Brooklyn, NY 11201, on the 9th day of July, 2018

PRESENT:

HON. JOHNNY L. BAYNES

JSC

Early Forthwith
Index No. 505270/17

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SUPREME GENERAL CONTRACTING, INC. 1,

Plaintiff,

Motion 1, 2, 3

-against-

MICHAEL WARMAN, MOJISOLA ROTIBI
WARMAN, LOUIS DILAURO, LEYDEN YNOBE
LEWIS, LLC, AM TITLE, INC., NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
TRIARCH, INC., LUSTRIN TETELMAN ADLER
LLP,

Defendants.

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KINGS COUNTY CLERK
FILED

Defendant A.M Title Agency, Inc. s/h/a AM TITLE, INC., (hereinafter "AM") moves by Notice of Motion, dated September 14, 2017, for an Order pursuant to Lien Law § 20, determining the amount required to be deposited into Court to effect the discharge of the mechanics lien filed by plaintiff, Supreme General Contracting, Inc., 1 (hereinafter "Supreme" and the mechanics lien filed by the defendant Leyden Ynobe Lewis, LLC, (hereinafter "Leyden").

Plaintiff, Supreme, moves by Notice of Cross-Motion, dated November 7, 2017, for an Order pursuant to Lien Law § 20, for an Order directing A.M. to pay plaintiff directly the sum of

One Hundred and Sixty Thousand (\$160,000.00) Dollars with interest to discharge plaintiff's lien.

Defendant, Michael Warman (hereinafter "Warman") moves by Notice of Cross-Motion, dated November 10, 2017, for an Order dismissing the cross-claim of Leyden; denying the cross motion filed by Supreme and voiding the lien pursuant to Lien Law § 39 on the grounds that the lienor has wilfully exaggerated the amount for which it claims a lien as stated in its notice of lien.

The instant action concerns a mechanics lien filed by plaintiff in the sum of \$160,000 for improvements to the premises located at 848 Carroll Street, Brooklyn, NY, Block 1072, Lot 14 (hereinafter the "Premises"). After he purchased the premises on December 31, 2012, he retained plaintiff to perform the renovation of the premises. Plaintiff and Warman thereafter agreed to a fee of \$225,800 "subject to additions and deductions as provided in the contract document". A schedule of payments was agreed upon. Warman claims that plaintiff never finished the work as agreed and instead presented him with change orders which Warman claims were never agreed upon, in the sum of \$140,000. It is Warman's position that plaintiff had received \$180,000 in payments and was not owed the sums set forth in the mechanics lien.

On January 18, 2017, the premises were sold to Defendant, Louis DiLauro (hereinafter "DiLauro") and an escrow held by AM for twice the amount of the mechanics liens asserted at the time. Since that date, the mechanics lien filed by Leyden has been dismissed for defective service. Warman has asserted, on information and belief, that plaintiff negotiated with DiLauro to complete the work and has, in fact, contracted to do so for the sum of \$200,000.

Warman now seeks to dismiss the mechanics' lien stating that the amount set forth in the lien was wilfully inflated. A.M., acting as stakeholder, seeks certainty in the amount required to satisfy the mechanics' lien and remove any and all cloud from title to the premises. Plaintiff

seeks direct payment of \$160,000 claiming that the escrow agreement between AM and Warman provides for immediate tender of the escrow funds. However, Warman clearly disputes the amount asserted. There are issues of fact as to how much exactly is owed and those determinations cannot be made based upon affidavits filed by the parties. Moreover, if, as Warman asserts, plaintiff has wilfully misstated the sums owed, then plaintiff would not be entitled to any sums whatsoever pursuant to Lien Law § 39.

Lien Law § 39 provides in pertinent part:

In any action or proceeding to enforce a mechanic's lien upon a private or public improvement or in which the validity of the lien is an issue, if the court shall find that a lienor has wilfully exaggerated the amount for which he claims a lien as stated in his notice of lien, his lien shall be declared to be void and no recovery shall be had thereon. No such lienor shall have a right to file any other or further lien for the same claim. A second or subsequent lien filed in contravention of this section may be vacated upon application to the court on two days' notice.

At this juncture, the court is unwilling to dismiss the plaintiff's lien or award it full payment as there are issues of fact surrounding whether plaintiff has actually recovered the sums due from DiLauro, whether it has intentionally overstated the amounts set forth in the mechanics lien or whether there are sums remaining due which plaintiff has asserted in good faith.

WHEREFORE, it is hereby

ORDERED and ADJUDGED that this matter will be heard by the Court on October 22, 2018, at which time plaintiff is to prove the sums allegedly owed by Warman including all sums paid by DiLauro and is to present any and all agreements between plaintiff and DiLauro; so that the Court can determine if dismissal of the plaintiff's interest is appropriate pursuant to Lien Law § 39 or if payment is appropriate pursuant to Lien Law § 20; and it is further

ORDERED and ADJUDGED that any sums held by A.M. in excess of \$160,000, including sums to which an interest was asserted by Leyden, and which are not subject to liens not a part of this litigation, are to be distributed as appropriate, per the contract of sale between Warman and DiLauro no later than August 15, 2018 ; and it is further

ORDERED and ADJUDGED that the sum of \$120,000 is to be paid into Court pending the hearing and determination of the hearing schedule for October 22, 2018, and upon such payment being made into Court, the mechanics lien will be deemed satisfied

The foregoing constitutes the decision and order of the court

ENTER



JOHNNY L. BAYNES, JSC

HON. JOHNNY LEE BAYNES

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KINGS COUNTY CLERK
FILED

