

Rudd Mech. Assoc., Inc. v ZDG, LLC

2019 NY Slip Op 32444(U)

August 16, 2019

Supreme Court, New York County

Docket Number: 656127/2018

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

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INDEX NO. 656127/2018

RUDD MECHANICAL ASSOCIATES, INC.,

MOTION DATE 6/13/2019

Plaintiff,

MOTION SEQ. NO. 001 & 002

- v -

ZDG, LLC, METRO NYC SERVICES, INC., PRESS BUILDERS,
INC., 310 GROUP, LLC, JOHN DOES 1 THROUGH 10,

DECISION AND ORDER

Defendants.

-----X

LOUIS L. NOCK, J.

Upon e-filed documents numbered 8 through 29, the motion of defendant ZDG, LLC, to dismiss (seq. no. 001), and the motion by plaintiff for a default judgment against the remaining defendants (seq. no. 002), are consolidated for disposition and decided as follows.

Plaintiff, a construction subcontractor, brings this action against defendants for outstanding labor and materials charged pursuant to a subcontract related to a construction project located at 310-312 West 40th Street, New York, New York. The amount sued for in the complaint is \$524,052.75. In addition to causes of action seeking a judgment for said sum, the complaint asserts a related cause of action for foreclosure of plaintiff's mechanic's lien filed against the above-noted property, with a face amount of \$451,423.35.

Plaintiff has moved for a default judgment against all defendants except for defendant ZDG, LLC, who has appeared in this action and moves to dismiss the claims against it. All the other defendants (the "Defaulting Defendants") have failed to appear in this action altogether. For clarity, the Defaulting Defendants do not include the John Doe defendants. As to the John Doe defendants, the claims against them are severed and dismissed.

During a teleconference with the court on August 16, 2019, attended by plaintiff's counsel and counsel for defendant ZDG, LLC, plaintiff's counsel consented to the dismissal of the claims against ZDG, LLC. Therefore, the motion by defendant ZDG, LLC, to dismiss (seq. no. 001) is granted on consent.

As for plaintiff's motion for a default judgment against the Defaulting Defendants (seq. no. 002): the affidavits of service of process on file with the court are regular on their faces and constitute *prima facie* evidence of proper service of process. Plaintiff has demonstrated its entitlement to a default judgment against said defendants, jointly and severally, on its causes of action against them.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment against defendants METRO NYC SERVICES, INC., PRESS BUILDERS, INC., and 310 GROUP, LLC, is granted; and it is, therefore, further

ORDERED AND ADJUDGED that plaintiff RUDD MECHANICAL ASSOCIATES, INC., shall have judgment against defendants METRO NYC SERVICES, INC., PRESS BUILDERS, INC., 310 GROUP, LLC, jointly and severally, in a principal amount of \$524,052.75, together with statutory interest thereon, accruing from May 1, 2017, until the date of satisfaction of judgment, plus statutory costs and disbursements of this action, and that plaintiff have execution therefor; and it is further

ORDERED AND ADJUDGED that plaintiff RUDD MECHANICAL ASSOCIATES, INC., shall have judgment of foreclosure upon its Mechanic's Lien filed on November 2, 2018, in the face amount of \$451,423.35, with interest accruing thereon from said filing date, subjecting the property located at 310 West 40th Street, New York, New York, to such lien, and judgment

that defendants METRO NYC SERVICES, INC., PRESS BUILDERS, INC., and 310 GROUP, LLC, and all persons claiming under them subsequent to the filing of plaintiff's aforesaid Mechanic's Lien, and every party whose conveyance or encumbrance is subsequently filed, recorded, or docketed, be forever barred and foreclosed of all right, claim, title, lien, and equity of redemption of said property or any part thereof, and that a sale of said property be had as provided by law, and that from the proceeds of such sale, plaintiff RUDD MECHANICAL ASSOCIATES, INC., shall be paid the amount of its aforesaid Mechanic's Lien, and aforesaid interest, plus the costs of such the sale; and it is further

ORDERED AND ADJUDGED that, pursuant to Article 3-A of the Lien Law, plaintiff RUDD MECHANICAL ASSOCIATES, INC., shall, as trust beneficiary, be entitled to inspect the books and records of each of defendants METRO NYC SERVICES, INC., PRESS BUILDERS, INC., and 310 GROUP, LLC; and to receive an accounting from each of the said defendants in connection with the property located at 310 West 40th Street, New York, New York; and it is further

ORDERED that the motion by defendant ZDG, LLC, to dismiss the claims against it is granted and, accordingly, said claims are dismissed; and it is further

ORDERED that the claims against the John Doe defendants are severed and dismissed.

This shall constitute the decision and order of the court.

ENTER:



8/16/2019
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLER ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE