

**Pilot Contr. Inc. v Frost Contrs. Corp.**

2019 NY Slip Op 33413(U)

October 23, 2019

Supreme Court, Kings County

Docket Number: 507951/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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PILOT CONTRACTING INC., Individually and on  
behalf all of Beneficiaries of the Trusts  
hereinafter alleged,

Plaintiff, Decision and order

- against -

Index No. 507951/19

FROST CONTRACTORS CORP., 145 HUNT LLC.,  
People of the State of New York, and  
John Doe #1 through 24, inclusive, the  
last 24 named Defendants being unknown  
and named fictitiously, the parties being  
all persons having or claiming an interest  
in or Lien upon the premises hereinafter  
described,

*MS # 1*

Defendants, October 23, 2019

-----X  
PRESENT: HON. LEON RUCHELSMAN

The defendant has moved seeking to discharge and cancel a  
Mechanic's Lien filed by the plaintiff. The plaintiff opposes  
the motion. Papers were submitted by the parties and arguments  
held. After hearing all the arguments this court now makes the  
following determination.

The defendant 145 Hunt LLC is the owner of property, a  
vacant lot located at 145 Huntington Street in Kings County. 145  
Hunt entered into a contract with defendant Frost Contractors  
Corp., to construct a three story building on the lot. Frost  
entered into a contract with subcontractor Pilot Contracting  
Inc., the plaintiff in this action. The plaintiff claims it is  
owed additional sums in the amount of \$125,000 and has placed a  
Mechanic's Lien on the property. The defendant owner now moves

for summary judgement seeking to vacate and dismiss the lien on the grounds the plaintiff has failed to demonstrate it is owed any fees.

On December 4, 2018 Pilot claimed it had completed the work and sought full payment. Thus, Pilot essentially walked off the job after claiming there was nothing more to do. This prompted Frost to fire Pilot since according to Frost there was significant work that remained outstanding. Indeed, Pilot does not argue the cement work, steel work, elevation work and water proofing and insulations, roof and roofing details and parapet details, safety code and Department of Building requirements and Plan Specification requirements as detailed in a letter submitted within Exhibit J of the motion to cancel the Mechanic's Lien was ever really completed. The plaintiff presents two arguments why the lien cannot be summarily cancelled. First, plaintiff argues any summary dismissal of the lien does not satisfy the requirements of Lien Law §19. Second, plaintiff argues the disposition of the lien must await a trial and cannot be summarily dismissed.

The defendant counters the requirements of Lien Law §19 do not yet begin where the lien is improperly filed or exaggerated.

However, whether the lien amount is exaggerated is generally a question of fact (Executive Towers at Lido LLC v. Metro Construction Services, 303 AD2d 545, 756 NYS2d 461 [2d Dept.,

2003]). As the court stated in Aaron v. Great Bay Contracting Inc., 290 AD2d 326, 736 NYS2d 359 [1<sup>st</sup> Dept., 2002] "the validity of the lien plainly turns on a dispute as to whether respondent has completed the work required by the contract, and, accordingly, must await trial of the foreclosure action" (id). Thus, a determination that a lien was willfully exaggerated generally cannot be decided on a summary judgement motion (see, Scarano Architect, PLLC v. 6322 Holding Corp., 35 Misc3d 1228(A), 954 NYS2d 761 [Supreme Court Kings County 2012]). The case cited by defendant in the Reply Affirmation, LMF-RS Contracting Inc., v. Nevzet Kaljic, 126 AD3d 436, 2 NYS3d 351 [1<sup>st</sup> Dept., 2015] did hold that a summary disposition regarding exaggeration could be made where the evidence was "conclusive" (id).

In this case it cannot be stated the amount of the exaggeration of the lien, if any, is conclusive. The defendant has presented an itemized list of unfinished work, as noted, however, there is no basis for a summary determination whether the amount of the lien is exaggerated. Indeed, where there is a dispute concerning the amount owed then summary judgement is improper (Turbo Carpentry Corp., Brancadoro, 21 AD3d 479, 800 NYS2d 566 [2d Dept., 2005]). Since the precise work left unfinished and the value of that work is in dispute a summary determination cannot be made at this time. Therefore, the motion seeking summary judgement vacating the Mechanic's Lien is

denied.

So ordered.

ENTER:



DATED: October 23, 2019  
Brooklyn N.Y.

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Hon. Leon Ruchelsman  
JSC

KINGS COUNTY CLERK  
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