

Matter of Javeri v Legacy Bldrs./Devs. Corp.
2020 NY Slip Op 31243(U)
May 8, 2020
Supreme Court, New York County
Docket Number: 150959/2020
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**In the Matter of the Application of
ATIT JAVERI,**

Petitioner,

INDEX NO. **150959/2020**

MOTION DATE

- against -

MOTION SEQ. NO. **1**

LEGACY BUILDERS/DEVELOPERS CORP.,

MOTION CAL. NO.

Respondent,

**For an Order compelling Respondent-Lienor
to deliver an itemized statement of labor and
material and the terms of the contract required by
Lien Law, Section 38.**

The following papers, numbered 1 to ____ were read on this motion for/to

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answer – Affidavits – Exhibits _____

Replying Affidavits

PAPERS NUMBERED

█
█
█
█

Cross-Motion: Yes X No

Petitioner Atit Javeri (“Petitioner”) moves pursuant to § 38 of the New York Lien Law for an Order directing Respondent Legacy Builders/Development Corp. (“Respondent”) to furnish an itemized statement of its mechanic’s lien. Respondent opposes.

Relevant Background

Petitioner contends that he is an individual who resides at 37E at 425 East 58th Street, New York, New York, Block 1370 and Lot 15 (the “Premises”). Petitioner contends that he owns the shares to the Premises and is the proprietary lessee under a proprietary lease for the Premises.

“According to the face of the subject mechanic’s lien, Respondent was hired by Petitioner, and allegedly supplied and installed ‘HVAC Materials, Carpentry

Materials, Paint, Electrical Materials, Tile, Stone, Plumbing Materials, Flooring Materials, etc.’ in connection with improvements to the Premises owned by Petitioner.” (Petitioner’s Memorandum of Law at 7).

On or about July 11, 2019, Respondent filed a Notice of Mechanic’s Lien with the Clerk of the County of New York in the amount of \$131,325.00 against the 425 East 58th Street, New York, New York, Block 1370 and Lot 15.

On or about August 7, 2019, Petitioner filed Bond No. 8000047200, issued by Atlantic Specialty Insurance Company (the “Bond”) with the Clerk of the County of New York. Petitioner contends that the Bond discharged Respondent’s mechanic’s lien pursuant to Lien Law § 19(4). The Clerk of the County of New York issued a Certificate of Discharge of Mechanic’s Lien dated August 28, 2019.

On July 26, 2019, Petitioner served Respondent with a demand to furnish Petitioner a verified itemized statement in writing within five days, setting forth the items of labor and the value thereof, and the items of material and the value thereof, which make up the amounts for which the mechanic’s lien was claimed, and the terms of the contract under which such items were furnished. Petitioner asserts that to date Respondent has failed to serve a verified itemized statement.

On January 28, 2020, Petitioner commenced this proceeding seeking to compel a response to its demand for a verified itemized statement.

Parties’ Contentions

Respondent argues that it is not required to provide a response to Petitioner’s demand for a verified itemized statement because the mechanic’s lien “was based on an express contract for a specific sum, and [Petitioner] was fully aware of the terms of the contract, and provided with invoices detailing the work that [Respondent] had completed.” (Respondent’s Affirmation in Opposition at 1). Moreover, Respondent asserts that it served a verified itemized statement as Exhibit A to the Opposition. Therefore, Respondent argues that the Petition is moot and should be denied in the entirety.

Petitioner argues that the itemized statement provided by Respondent “claims that the its work was completed and the total contract sum was \$660,488.00 (see executed Payment Application #10, Exhibit 5), yet the mechanic’s lien filed by Respondent (21 days after Payment Application #10 was signed by Respondent) purports that \$726,106.00 is the value of Respondent’s labor and materials at the

Project.” (Petitioner’s Reply Memorandum of Law at 2). Petitioner asserts that the itemized statement also states an alleged balance for “purported change orders, invoices and requisitions”. Petitioner argues that Respondent has not itemized the labor and materials and does not show the difference between the work that was contracted and the additional work. Furthermore, Petitioner argues the change orders were never executed by Petitioner and the value is unknown and unsubstantiated, therefore Petitioner is entitled to “full itemization” of the change orders.

Moreover, Petitioner argues that “Respondent credited Petitioner \$50,000.00 for “Scope Change and Constructio[n]” and duly executed the same and issued a partial waiver of lien and release attesting to only \$45,703.15 being owed for the Project.” (Petitioner’s Reply Memorandum of Law at 4). Petitioner asserts that Respondent includes an unsigned version of Payment Application #10 which shows that Respondent reverses the \$50,000.00 credit without providing a reason, and includes \$51,553.00 in alleged change orders without providing any change orders executed by Petitioner. Petitioner argues that because Respondent failed to calculate the \$50,000.00 credit in the mechanic’s lien, Respondent willfully exaggerated the sum. Petitioner further argues the mechanic’s lien “is based upon claims that are fictitious and/or fabricated” because Respondent failed to provide factual and legal support for the alleged \$51,553.00 in change orders stated in the unsigned Payment Application #10. Petitioner asserts that the signed Payment Application #10 contradicts the sums sought in the mechanic’s lien.

Legal Standard

Pursuant to Lien Law § 38, an owner or contractor may demand from a lienor a statement setting forth “the items of labor and/or material and the value thereof which make up the amount for which he claims a lien, and which shall also set forth the terms of the contract under which such items were furnished.” Lien Law § 38 further provides:

If the lienor shall fail to comply with such a demand within five days after the same shall have been made by the owner or contractor, or if the lienor delivers an insufficient statement, the person aggrieved may petition the supreme court of this state ... for an order directing the lienor within a time specified in the order to deliver to the petitioner the statement required by this section ... The court or a justice or judge thereof shall hear the parties and upon being satisfied that the lienor has failed, neglected or refused to

comply with the requirements of this section shall have an appropriate order directing such compliance. In case the lienor fails to comply with the order so made within the time specified, then upon five days' notice to the lienor, served in the manner provided by law for the personal service of a summons, the court or a justice or judge thereof may make an order canceling the lien.

The purpose of the itemized statement is to apprise those aggrieved by the notice of lien of the details of the lienor's claim. *F.J.C. Cavo Const v Robinson*, 81 AD2d 1005 [4th Dept 1981]. "Itemization of labor and materials is not required with respect to a balance of an agreed price where, as here, it is claimed that the contract has been substantially completed." *819 Sixth Ave. Corp. v T. & A. Assoc., Inc.*, 24 AD2d 446, 446 [1st Dept 1965]. "But it is the rule that where there is a claim for extra work and materials, a detailed itemization of such claim must be furnished." *Id.* "The statement should clearly show the difference between the contract work and that of the extras, with itemization of the labor and material comprising the extras." *Id.* (citation omitted). The lienor must provide "the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of the labor charges." *Id.* "Nothing short of this detail will satisfy the statutory requirement that the statement shall 'set forth the items of labor and/or material and the value thereof which make up the amount for which * * * [a lien is claimed]." *Id.*

Discussion

Here, Petitioner served Respondent with a demand to furnish Petitioner a verified itemized statement in writing. To date Respondent has failed to serve a verified itemized statement. While there was a contract between the parties, additional work was performed. Respondent has stated that it served a verified itemized statement as Exhibit A to the Opposition; however, Respondent has not itemized the labor and materials and does not show the difference between the work that was contracted and the additional work. Respondent must "clearly show the difference between the contract work and that of the extras, with itemization of the labor and material comprising the extras" and must provide "the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of the labor charges." *819 Sixth Ave. Corp.*, 24 AD2d at 446. Therefore, Petitioner is entitled to an itemized statement pursuant to Lien Law § 38.

Wherefore, it is hereby

ORDERED that Respondent shall produce an itemized statement of (i) the labor and/or material furnished and the value therefor which make up the amount claimed in the lien; and (ii) the terms of the contract under which such items are furnished within five (5) days from the date of service of a copy of this Order with Notice of Entry in the manner provided by law for the personal service of a summons; and it is further

ORDERED that, if Respondent fails to comply with this Order within the time specified, then upon the requisite notice to Respondent, served by Petitioner in the manner provided by law for the personal service of a summons, the Court shall issue an Order directing the cancellation and discharge of the Lien.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: May 8, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**