

Red Hook Constr. Group-II LLC v Clinton Hill Dev. I, LLC
2020 NY Slip Op 33603(U)
October 28, 2020
Supreme Court, New York County
Docket Number: 654180/2020
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **IAS MOTION 14**

Justice

-----X

RED HOOK CONSTRUCTION GROUP-II LLC,

Plaintiff,

- v -

CLINTON HILL DEVELOPMENT I, LLC, J1616
CONSTRUCTION CO. LLC

Defendant.

-----X

INDEX NO. 654180/2020

MOTION DATE 10/27/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISS.

The motion by defendant Clinton Hill Development I, LLC (“Clinton Hill”) to dismiss the fourth cause of action and to impose sanctions is granted in part and denied in part.

Background

This action arises out of construction work performed at a property owned by Clinton Hill located in Brooklyn. Plaintiff claims that it entered into a contract to certain work at the property in July 2015. It claims that although it was paid over \$2 million for the project, it is still owed \$69,256.80. Plaintiff claims that it subsequently filed a mechanic’s lien on the property on September 22, 2017.

Clinton Hill moves to dismiss the fourth cause of action—foreclosure of the mechanic’s lien—on the ground that plaintiff does not have a valid lien. It points out that plaintiff’s attempt to extend the validity of the mechanic’s lien was denied in August 2020 and that plaintiff cannot seek foreclosure of an expired lien.

It adds that plaintiff's submission of a verified pleading concerning the lien foreclosure claim is sanctionable conduct because plaintiff knew the lien had lapsed and it still pled a cause of action that was no longer viable.

In opposition, plaintiff explains that it filed the instant action on September 1, 2020, just two weeks after the date upon which the lien would have otherwise expired (August 14, 2020) and within the tolling period covered under the governor's executive orders relating to the ongoing pandemic. It claims that it did not learn that the Court handling the ex parte application for an extension of the lien had rejected the application (under Index No. 3183/2019 in Kings County) until September 2020.

In reply, Clinton Hill argues that the executive orders suspended the time in which a litigant must commence a legal action but, here, plaintiff unsuccessfully took affirmative action to extend the lien. It argues that the executive order does not suspend the expiration of a mechanic's lien. Clinton Hill argues that even if the executive order did apply, plaintiff should be barred from litigating the expiration of this mechanic's lien under the doctrine of collateral estoppel.

Fourth Cause of Action

As an initial matter, the Court grants the branch of the motion seeking dismissal of the fourth cause of action. Plaintiff is correct that the executive orders issued by the governor would likely apply to plaintiff's deadline to file for an extension for a mechanic's lien. But the question here is not whether plaintiff timely filed for an extension. Rather, plaintiff made an application in Kings County prior to the expiration of the subject lien and it claimed that the lien was going to expire on August 14, 2020. The Court then denied that application.

There is nothing in the executive orders that suggests that it would invalidate a decision rendered by a court on an application properly before it. This is not a situation where a party seeks to vacate a default judgment based on the executive orders; rather, plaintiff wants this Court to flat out ignore the denial of their application (where they admitted the lien expired on August 14, 2020). The Court sees no basis to do so. Besides, this Court does not hear appeals from Supreme Court, Kings County.

Moreover, as Clinton Hill argues, plaintiff is estopped from arguing in this forum that the lien has not expired. It argued in the Brooklyn case that the lien was going to expire on August 14, 2020 and the application for an extension was denied. Plaintiff cannot argue here that somehow the executive orders, of which it was (or should have been) fully aware, permit it to make a different argument in this case.

Sanctions

“The court rule set forth in 22 NYCRR 130–1.1, which is intended to limit frivolous and harassing behavior, authorizes a court, in its discretion, to award a party in a civil action reasonable attorney's fees resulting from frivolous conduct. Conduct is frivolous if, inter alia, it is completely without merit in law or undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party” (*Hutter v Citibank, N.A.*, 142 AD3d 1049, 1049-50, 38 NYS3d 35 [2d Dept 2016] [internal citations and quotations omitted]).


The Court denies the branch of the motion seeking sanctions. There is clearly a legitimate issue in this motion—the extent and application of the executive orders relating to the pandemic. Simply because the Court does not agree with plaintiff does not render its decision to include this cause of action as frivolous conduct. Moreover, as plaintiff points out, it was apparently not aware of the denial of its extension application when it filed this case; the application for an extension was filed in August 2020 and this case was commenced on September 1, 2020. That timeline does not support a claim that plaintiff engaged in frivolous conduct.

And although counsel for defendant demanded that plaintiff withdraw this cause of action, it only gave plaintiff a week to do so (NYSCEF Doc. No. 7) and two weeks before this motion was filed. This is not a case where a plaintiff ignored such a request for months.

Accordingly, it is hereby

ORDERED that the motion by defendant Clinton Hill Development I, LLC is granted to the extent that it sought dismissal of the fourth cause of action and denied to the extent it sought sanctions.

Remote Conference: February 19, 2021.

10/28/2020		
DATE		ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE