

Matter of Tribeca M Corp.
2020 NY Slip Op 33739(U)
November 10, 2020
Supreme Court, New York County
Docket Number: 158260/2020
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 6

**In the Matter of the Petition of
TRIBECA M CORP.,**

Petitioner,

INDEX NO. 158260/2020
MOTION DATE
MOTION SEQ. NO. **1**
MOTION CAL. NO.

**For an Order vacating and cancelling a certain
Mechanic’s Lien filed by Lienor, CLIMAX
HVAC MECHANICAL CORP., against
premises known and described as 407 Greenwich
Street, New York, NY, said premises being
situated in Block 214, Lots 1301, 1311 and 1313,
as shown on the Land and Tax Map of the
County of New York.**

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 Tribeca M. Corp. (“Petitioner”) moves pursuant to Lien Law §§ 19(3) and 59 for an Order vacating and cancelling the Notice of Mechanic’s Lien filed by Respondent Climax HVAC Mechanical Corp. (“Respondent”) on September 5, 2018. Petitioner further seeks an Order directing the County Clerk of New York County to return the Lien Discharge Bond filed to discharge the Mechanic’s Lien. There is no opposition.

Relevant Background

According to the Petition, Petitioner is the contract owner and condominium sponsor of the property located at 407 Greenwich Street, New York, New York 10013 a/k/a 15 Hubert Street, New York, New York (the “Property”) and, through its managing agent, Samson Management, LLC, engaged DCBE Contracting Inc. (“DCBE”) as the general contractor to perform construction renovation work at the Property (the “Project”). Petitioner contends that DCBE retained

subcontractor/material supplier Respondent to furnish and install HVAC equipment and related materials.

Petitioner contends that on or about September 5, 2018, Respondent filed a Notice of Mechanic's Lien with the Clerk of the County of New York in the amount of \$154,000.00 (the "Lien") against the Property located in the City of New York, County of New York and State of New York, at Block 214 – Lots 1301, 1311 and 1313 and known as 407 Greenwich Street, New York, New York 10013 a/k/a 15 Hubert Street, New York, New York.

Petitioner contends that on or about October 31, 2018, Petitioner posted a surety bond in the amount of \$169,400.00 underwritten by Atlantic Specialty Insurance Company as surety, causing the Lien to be discharged in favor of the bond as substitute security pursuant to § 19 of the Lien Law.

Petitioner contends that on or about October 11, 2019, counsel for Petitioner had a mechanic's lien search for the Property done. Petitioner contends that the search indicated that on or before October 31, 2018, the Lien was discharged by Bond No. 800024363, Index No. 101597/18. Petitioner further contends that the search stated that on or about September 16, 2019, the Lien was extended for a period of one year, pursuant to § 17 of the Lien Law. Petitioner contends that counsel for Petitioner performed a diligent search of the New York State Courts Electronic Filing system for mechanic's lien foreclosure actions, and found that Respondent failed to commence an action to foreclose the Lien within one year of the filing of the one year extension as required by § 17 of the Lien Law.

Discussion

Lien Law § 17 provides, in relevant part that:

No lien . . . shall be a lien for a longer period than one year after the notice of the lien has been filed, unless within that time an action is commenced to foreclose the lien . . . or unless an extension to such lien . . . is filed within one year from the filing of the original notice of lien, continuing such lien [for one year from the filing thereof] . . . No lien shall be continued by such extension for more than one year from the filing thereof. In the event an action is not commenced to foreclose the lien within such extended

period, such lien shall be extinguished unless an order be granted by a court of record or a judge or justice thereof, continuing such lien

“Pursuant to Lien Law § 17, a mechanic’s lien expires one year after filing unless an extension is filed with the County Clerk or an action is commenced to foreclose the lien within that time and a notice of pendency is filed in connection therewith.” *Aztec Window & Door Mfg., Inc. v 71 Village Road, LLC*, 60 AD3d 795, 796 [2d Dept 2009].

“A mechanic’s lien is an incumbrance on realty.” *Perrin v. Stempinski Realty Corp.*, 15 AD2d 48, 49 [1st Dept 1961]. “It is essential that persons dealing with the owner should be able to ascertain with certainty and celerity just what claims against the property are in effect.” *Id.* “The short statute of limitations for filing is indicative of this purpose.” *Id.*

Lien Law § 19(3) provides, in relevant part, that “[b]y order of the court vacating or cancelling such lien of record, for neglect of the lienor to prosecute the same...”

Here, Respondent filed the Notice of Mechanic’s Lien more than one year ago. Respondent has failed to commence an action to foreclose such lien or to secure an order continuing it. Respondent has submitted no opposition. Therefore, Respondent’s Lien is vacated and cancelled.

Wherefore, it is hereby

ORDERED that the Petition is granted without opposition; and it is further

ORDERED that the Notice of Mechanic’s Lien in the sum of \$154,000.00, filed by Respondent Climax HVAC Mechanical Corp., on September 5, 2018, with the County Clerk of the County of New York against Petitioner and the property located at 407 Greenwich Street, New York, New York, Block 214, Lots 1301, 1311 and 1313 is hereby vacated; and the and the County Clerk shall amend its records accordingly; and it is further

ORDERED that the County Clerk shall return the Lien Discharge Bond filed to discharge the subject Mechanic’s Lien, which Lien Discharge Bond was issued by Atlantic Specialty Insurance Company, as surety, and Petitioner, as principal.

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

Dated: November 10, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

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