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| <b>Bridgeton 396 Broadway Fee LLC v Rock Group NY Corp.</b>                                                                                                                                                                    |
| 2020 NY Slip Op 34076(U)                                                                                                                                                                                                       |
| December 9, 2020                                                                                                                                                                                                               |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: 160590/2019                                                                                                                                                                                                     |
| Judge: W. Franc Perry                                                                                                                                                                                                          |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

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INDEX NO. 160590/2019

**MOTION DATE** 10/08/2020

**MOTION SEQ. NO.** 002

- v -

**DECISION + ORDER ON  
MOTION**

Respondent.

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were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN

However, on July 15, 2020, Respondent made its first appearance in this case, filing an answer to the petition, documentation demonstrating that it had served the itemized statement upon Petitioner on the same day, and an opposition to Petitioner's motion to cancel the lien. Petitioner rejected the opposition on the grounds that it was to be served on or before June 30, 2020 and also filed its reply. The motion has been fully submitted.

## BACKGROUND

Petitioner is the owner of the property. Respondent was hired, as a subcontractor to non-party Rinaldi Group LLC, to perform scaffolding duties for the construction project pursuant to the “Sub Contractor Agreement/Purchase Order”. (NYSCEF Doc No. 26.) Respondent filed the mechanic’s lien on August 5, 2019, alleging that Petitioner failed to pay it \$195,625.24 of the \$777,779.53 contract. Petitioner filed a bond issued by Aspen American Insurance Company to discharge the lien.

Here, Respondent was to furnish the lien itemization to Petitioner within 20 days of service of this court’s March 10, 2020 decision and order. (NYSCEF Doc No. 11.) Petitioner served copies of the order on March 20, 2020 and April 17, 2020. (NYSCEF Doc No. 15 at ¶ 8.) Thus, Respondent was to have furnished the lien itemization to Petitioner by May 7, 2020.

However, Respondent furnished its lien itemization to Petitioner on July 15, 2020. (NYSCEF Doc No. 26.) Petitioner rejected the lien itemization for lateness and also rejected Respondent’s opposition on the grounds that the current motion was returnable on July 2, 2020. (NYSCEF Doc No. 27.) Respondent replied that the delays were due to the COVID-19 pandemic. (NYSCEF Doc No. 28.)

In Petitioner’s reply, it argues that the itemization is deficient, in that it includes a total contract amount that is inconsistent with an additional invoice, it includes work that was never performed, and that certain line items do not align with a schedule submitted to Rinaldi, the general contractor. (NYSCEF Doc No. 29.) Petitioner also argues that the itemization is deficient because it “fails to describe the items and costs of labor (*e.g.*, workers, the work actually performed, and the hours’ rates of pay actually paid) and the items and costs of materials it claims it furnished at the direction of the non-party construction manager, Rinaldi.” (NYSCEF Doc No. 32 at ¶ 10.)

### DISCUSSION

Lien Law § 38 requires a lienor, upon written request by a property owner or contractor, to furnish “a statement in writing which shall set 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.” “Where the mechanics' lien is based on a written contract that specifies an agreed price and where the work has been substantially completed, a separate itemization of labor and materials is not required.” (*Biltmore Theatre LLC v. Evergreene Painting Studios, Inc.*, 2005 WL 6464456 [Sup Ct, NY County 2005].) “However, where the lien is based on a claim for extra work and materials not included in the contract, a detailed itemization must be furnished.” (*Id.*)

The court finds that the documents furnished by Respondent (a schedule of fees incurred, a history of payments received, and a series of change orders) complies with the statutory itemization requirement. Additionally, the court declines to cancel the lien due to Respondent's untimely submission of the itemization, in the exercise of its discretion. (*J. Sackaris & Sons, Inc. v Terra Firma Const. Management & General Contracting, LLC*, 14 AD3d 538, 541 [2d Dept 2005].) Accordingly, it is hereby

ORDERED that Petitioner's motion sequence 002 to cancel the Respondent's mechanic's lien in the amount of \$195,625.24 is denied; and it is further

ORDERED that the Petition is dismissed.

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

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|-----------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------|
| <u>12/09/20</u>       |                                                                             |  |                                    |
| <b>DATE</b>           |                                                                             | <b>W. FRANC PERRY, J.S.C.</b>                                                       |                                    |
| CHECK ONE:            | <input checked="" type="checkbox"/> CASE DISPOSED                           | <input type="checkbox"/> NON-FINAL DISPOSITION                                      |                                    |
|                       | <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED | <input 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 |