

Pizzarotti, LLC v Gravity Constr. Corp.
2021 NY Slip Op 30179(U)
January 19, 2021
Supreme Court, New York County
Docket Number: 160095/2020
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD **PART** **IAS MOTION 35EFM**

Justice

-----X

PIZZAROTTI, LLC

Plaintiff,

- v -

GRAVITY CONSTRUCTION CORP.,

Defendant.

-----X

INDEX NO. 160095/2020

MOTION DATE 11/23/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

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

Upon the foregoing documents, it is

ADJUDGED that the petition for relief pursuant to Lien Law § 17 of petitioner Pizzarotti, LLC (motion sequence number 001), is denied and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order, along with Notice of Entry, on all parties within twenty (20) days.

In this proceeding pursuant to the Lien Law, petitioner Pizzarotti, LLC (Pizzarotti) seeks an order cancelling certain mechanic's liens filed against it by respondent Gravity Construction Corp. (Gravity; motion sequence number 001). For the following reasons, the petition is denied.

FACTS

Pizzarotti was the construction manager hired to oversee a renovation project at a building located at 527 West 27th Street (Block 699, Lots 1402, 1403, 1404, 1407, 1408, 1409, 1411, 1412, 1414, 1415, 1416, 1418, 1419, 1421, 1422, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1433, 1435, 1436, 1437 and 1438) in the County, City and State of New York (the building). *See* verified petition, ¶ 5. Non-party WC 28 Realty LLC (WC 28) is the building's owner, and Gravity is a masonry subcontractor that Pizzarotti retained. *Id.*, ¶ 6.

On November 17, 2020, Gravity filed seven separate mechanic's liens with the New York County Clerk against Pizzarotti and WC 28, each claiming \$118,664.69 in unpaid bills (\$830,652.83 in total). *See* verified petition, ¶ 6; exhibit A. Pizzarotti notes that the liens each list April 27, 2020 as the last day on which Gravity performed work or furnished material at the building. *Id.*, ¶ 7. However, Pizzarotti asserts that this is false, and that Gravity did not perform any work on that day, and had not for several months previously, because the work site had been ordered closed due to the Covid-19 national pandemic. *Id.*, ¶¶ 8-17. Pizzarotti argues that this false claim renders the liens void and unenforceable under Lien Law § 19 (6). *Id.*, ¶¶ 18-20. Gravity's president Navdeep Singh (Singh) avers that his employees had largely completed their work at the building by July 2019, but claims that they last appeared at the building on April 27, 2020 to remove their tools and equipment. *See* Singh aff in opposition, ¶¶ 6-17. Singh asserts that the monies specified in the liens remain unpaid. *Id.*, ¶¶ 18-23; exhibit J.

Pizzarotti commenced this proceeding via order to show cause on November 20, 2020, and the court initialized the order to show cause on November 23, 2020. *See* verified petition. Gravity thereafter filed opposition papers on December 17, 2020. *See* Frade affirmation in opposition. The matter is now fully submitted (motion sequence number 001).

DISCUSSION

As previously mentioned, Pizzarotti seeks to discharge Gravity's liens pursuant to Lien Law § 19 (6), which provides, in part, as follows:

“Where it appears from the face of the notice of lien that the claimant has no valid lien by reason of the character of the labor or materials furnished and for which a lien is claimed, or where for any other reason the notice of lien is invalid by reason of failure to comply with the provisions of section nine of this article, or where it appears from the public records that such notice has not been filed in accordance with the provisions of section ten of this article, the owner or any other party in interest, may apply to the supreme court of this state, or to any justice thereof, or to the county judge of the county in which the notice of lien is filed, for an order summarily discharging of record the alleged lien. . . . [emphasis added].”

Pizzarotti's COO, Ignazio Campoccia (Campoccia), asserts that Pizzarotti received Gravity's last payment application in July 2019, which covered work performed through June 2019. *See* verified petition, Campossio aff, ¶ 9. Campoccia avers that Gravity “fabricated” the April 27, 2020 date specified on the liens, and that “it is impossible that [Gravity] was working on the premises on” that date, since the work site closed in March 2020 pursuant to an executive order from Governor Cuomo. *Id.*, ¶¶ 10-17. Campoccia thus argues that this “false statement” renders Gravity's liens “prima facie invalid,” and subject to discharge under Lien Law § 19 (6). *Id.*, ¶¶ 18-20.

Singh responds that April 27, 2020 was not a “fabricated date.” *See* Singh aff in opposition, ¶¶ 1-12. He asserts that Pizzarotti had contacted him several days earlier to request that he execute a “close-out document,” but that he declined to do so because Pizzarotti had still not made a full payment. *Id.*, ¶¶ 13-14. Singh further asserts that he instead sent Gravity

employees to the worksite on April 27, 2020 to retrieve their tools and equipment, as they were obligated to do by paragraph 6.2 of Gravity's subcontract with Pizzarotti, in the hope that this would "close out" Gravity's responsibilities to Pizzarotti. *Id.*, ¶¶ 15-16; exhibit A (Gravity contract). Singh avers that Pizzarotti never advised him that the work site was closed during their conversations in April 2020. *Id.*, ¶ 17. Singh finally asserts that he caused the seven instant liens to be filed on November 17, 2020 after having diligently and unsuccessfully attempted to secure payment from Pizzarotti. *Id.*, ¶¶ 18-23.

Gravity's counsel argues that there is nothing "invalid on the face of the liens," in violation of Lien Law § 19 (6), because they state that April 27, 2020 was the last date on which Gravity performed contracted services, and record that the liens' filing date was November 17, 2020, which was within the eight-month time period specified in Lien Law § 10. *See* Frade affirmation in opposition, ¶¶ 15-22. Counsel contends that the liens are therefore "facially valid," and that "[t]o the extent that Pizzarotti disputes the representations that constitute the face of the Liens, they will have to do so at trial." *Id.*, ¶ 20. Counsel is correct. Prevailing Appellate Division case law holds that "a notice of lien is facially valid if it 'sets forth dates indicating that the lien was filed within the applicable limitations period,'" and consequently will not be subject to discharge under Lien Law § 19 (6). *Matter of Beebe v Liebel*, 168 AD3d 1246, 1247-1248 (3d Dept 2019), quoting *Matter of Taocon, Inc. v Urban D.C. Inc.*, 110 AD3d 423, 423 (1st Dept 2013). Here, the seven liens all indicate that they were filed on November 17, 2020, which is seven months after the April 27, 2020 work completion date, and therefore within the eight-month time period specified in Lien Law § 10.

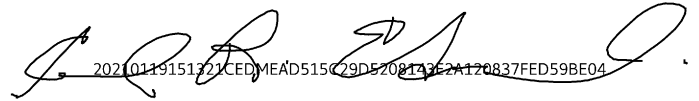
As a result, the court finds that Pizzarotti may not request that these liens be discharged pursuant to Lien Law § 19 (6), because they are facially valid. Accordingly, the court concludes that Pizzarotti’s petition should be denied as meritless.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief pursuant to Lien Law § 17 of petitioner Pizzarotti, LLC (motion sequence number 001), is denied and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order, along with Notice of Entry, on all parties within twenty (20) days.



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1/19/2021

DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE