

**Midhattan Woodworking Corp. v Unity Constr.  
Group, LLC**

2021 NY Slip Op 30238(U)

January 25, 2021

Supreme Court, New York County

Docket Number: 161102/2019

Judge: David Benjamin Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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MIDHATTAN WOODWORKING CORP.,

Plaintiff,

- v -

UNITY CONSTRUCTION GROUP, LLC, REQUIRO TERRA, LLC, RAMONA VICKERS, BRIAN VICKERS, CITIBANK, N.A., MERS, INC., FURNITURE DESIGN SOLUTIONS NY LLC, and JOHN AND JANE DOE NOS. 1-10,

Defendants.

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INDEX NO. 161102/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for JUDGMENT - SUMMARY.

In this action to foreclose on a Mechanic's Lien, defendants Citibank, N.A. ("Citi") and MERS, Inc. a/k/a Mortgage Electronic Registration Systems, Inc., as nominee for Citibank, N.A. ("MERS") (collectively "Movants") move, pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaint by plaintiff Midhattan Woodworking Corp. ("Plaintiff") as against them. Plaintiff opposes the motion. For the reasons set forth herein, the motion is granted.

BACKGROUND

Defendant Requirro Terra, LLC ("Requirro Terra") was the owner of record of the property situated at 92 Greene Street, Unit No. PH-7A, New York, NY 10012, also known as Block 499, Lot 1511 (the "Property").

Citi was a mortgagee of record with respect to a consolidated mortgage dated December 22, 2017 (the "Citi Mortgage"), given by Requirro Terra, in the original amount of \$4,500,000

(Doc. 16). The Citi Mortgage was recorded in the office of the New York County Register on January 09, 2018, and it encumbered the Property and was a lien on it (Doc. 13 ¶ 7).

MERS was also a mortgagee of record with respect to a mortgage dated December 22, 2017, given by Requiro Terra (the “MERS mortgage”), in the original amount of \$1,500,000 (Doc. 17). The MERS mortgage was recorded in the office of the New York County Register on January 9, 2018, and it encumbered the Property and was a lien on it (Doc. 13 ¶ 8).

On November 15, 2018, Plaintiff filed a Mechanic’s Lien against the Property in the amount of \$64,921 for Defendant Unity Construction Group, LLC’s alleged nonpayment of Plaintiff’s woodwork services (Doc. 1 ¶¶ 19-26). On November 14, 2019, Plaintiff commenced this action to foreclose on its Mechanic’s Lien. Only the First Cause of Action (Foreclosure on Mechanic’s Lien) in the complaint seeks relief against Movants (Doc. 1).

### **1. The Parties’ Contentions**

Movants seek an order granting summary judgment dismissing the complaint as against them, arguing that they are not necessary parties to the action. They argue that their mortgages are superior to, and have priority over, Plaintiff’s Mechanic’s Lien; that no relief/damages can be granted against them in this action as “any relief granted with respect to the foreclosure of the Mechanic’s Lien must be made subject and subordinate to [Movants’] superior mortgages of record[,]” and that “Plaintiff cannot foreclose, extinguish or affect their rights and interests[.]” (Doc. 13 ¶¶ 17, 21, 23-25, 26, 29). Movants further argue that a dismissal against them would not affect Plaintiff’s right to proceed in this action (*Id.* ¶ 31).

In opposition, Plaintiff argues that “[Movants] fail to establish priority[,]” and even as “prior mortgagees,” with priority, they would be necessary and/or proper parties (Doc. 23 ¶¶ 14, 15, 18-20.) Plaintiff further argues that “[Movants’] own argument that ‘relief that may

ultimately be granted with respect to the foreclosure of the Mechanic's Lien should be made subject and subordinate to [Movants'] existing mortgages of record” (*Id.* ¶ 12).

In reply and further support of their motion, Movants argue that “[t]hey do not need to remain defendants to this action solely for purposes of ‘notice’ when no relief is actually being sought against them[.]” (*Id.* ¶ 10).

## LEGAL CONCLUSIONS

### 1. The Summary Judgment Standard

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). Once met, the burden shifts to the opposing party, who must establish the existence of a triable issue of fact to defeat the summary judgment motion (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). It is well-established that “[t]his burden is a heavy one,” requiring that the “facts . . . be viewed in the light most favorable to the non-moving party” (*Jacobsen v NY City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [internal quotation marks and citation omitted]). “Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

### 2. The Lien Law

“A valid prior recorded mortgage has priority over a subsequent mechanic's lien.” (*W. L. Dev. Corp. v Trifort Realty, Inc.*, 44 NY2d 489, 499 [1978], citing Lien Law § 13[1]).

Lien Law § 44, entitled “Parties to an action in a court of record,” provides, in relevant part:

In an action in a court of record to enforce a lien against real property...the following are necessary parties defendants [sic] [:]

(1) All lienors having liens [sic] notices of which have been filed against the same real property...prior to the filing of the notice of lis pendens in such action[.]

(2) All persons having subsequent liens or claims against such real property...by mortgage...recorded prior to the filing of the notice of lis pendens[.]

...

(4) Where by law, a notice of lis pendens may not be filed in such action, all lienors having liens notices of which have been filed against the same real property, and all persons having subsequent liens or claims against such real property, by judgment, mortgage or otherwise.

(Lien Law § 44[1], [2], [4].)

Section 44 of the Lien Law provides “that the only persons who can be made parties are those who are subsequent incumbrancers by mortgage and otherwise” (*Alyea v Citizens' Sav. Bank*, 12 AD 574, 577 [1st Dept 1896], *affd*, 162 NY 597 [1900]). Under this section, a prior mortgagee is not a proper party defendant in an action to foreclose a mechanic’s lien (*see Brown v Danforth*, 37 AD 321, 321-23 [4th Dept 1899]; *Robert-Allen Assoc., Inc. v Carver Fed. Sav. & Loan Ass'n*, 66 Misc 2d 202, 203 [App Term 1st Dept 1971] [granting summary judgment to a mortgagee holding a senior secured interest in property]; *Walter Boss, Inc. v Cleary*, 2018 N.Y. Slip Op. 33194[U], 29 [N.Y. Sup Ct, Suffolk County 2018]; *H.M. Hughes Co. v Carmania Corp., N.V.*, 1989 WL 63109, at \*1 [SDNY June 8, 1989]; *see contra SNM Const. Llc v Taylor*, 2013 N.Y. Slip Op. 32567[U] [N.Y. Sup Ct, New York County 2013] [finding that prior mortgagees who have an interest in the real property are necessary parties]).

### 3. Application

The instant motion presents this Court with the following question: is a mortgagee, holding a current mortgage, which was recorded prior to the filing of a mechanic’s lien, a proper party in an action to foreclose on a mechanic’s lien?

Movants make a prima facie showing as a matter of law that their mortgages have priority over Plaintiff's lien since their mortgages were recorded on January 9, 2018, which was prior to the filing of Plaintiff's Mechanic's Lien on November 15, 2018 (see *W. L. Dev. Corp.*, 44 NY2d at 499, citing Lien Law § 13[1]). Further, Movants make a prima facie showing that, as prior mortgagees, they are not necessary or even proper parties to Plaintiff's Mechanic's Lien foreclosure proceeding (see *Brown*, 37 AD at 321-23; *Robert-Allen Assoc., Inc.*, 66 Misc 2d at 203; *Walter Boss, Inc.*, 2018 N.Y. Slip Op. 33194[U], 29; *H.M. Hughes Co.*, 1989 WL 63109, at \*1).

Plaintiff fails to establish a triable issue of fact that would defeat this showing under Lien Law § 13(2) or Lien Law § 22 or any other binding authority. Plaintiff further fails to make an availing argument as to how the requested dismissal would adversely affect its rights in this action.

### CONCLUSION

Accordingly, it is hereby:

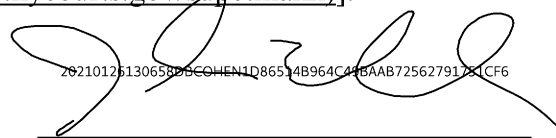
ORDERED that the motion of defendants Citibank, N.A. and MERS, Inc. a/k/a Mortgage Electronic Registration Systems, Inc., as nominee for Citibank, N.A. to dismiss the complaint herein is granted, and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).



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DAVID BENJAMIN COHEN, J.S.C.

1/25/2021  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: