

**CVRE 125th St. LLC v Ekon Group Inc.**

2021 NY Slip Op 30720(U)

March 10, 2021

Supreme Court, New York County

Docket Number: 151184/2021

Judge: Eileen A. Rakower

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

**PRESENT: Hon. EILEEN A. RAKOWER**

**PART 6**

*Justice*

**CVRE 125<sup>th</sup> STREET LLC,**

**INDEX NO. 151184/2021**

**Petitioner,**

**MOTION DATE**

**- against -**

**MOTION SEQ. NO. 1**

**EKON GROUP INC.,**

**MOTION CAL. NO.**

**Respondent.**

The following papers, numbered 1 to \_\_\_\_ were read on this motion for/to

**PAPERS NUMBERED**

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...



Answer – Affidavits – Exhibits \_\_\_\_\_

Replying Affidavits

**Cross-Motion: Yes X No**

Petitioner CVRE 125th Street LLC (“Petitioner”) moves pursuant to § 38 of the New York Lien Law for an Order directing Respondent Ekon Goup Inc. (“Respondent”) to furnish an itemized statement of the labor and/or material furnished and the value thereof which make up the amount claimed in the lien described herein; and the terms of the contract under which such items were furnished. Petitioner also seeks the Court to cancel one of the two duplicative liens for failure to file an affidavit of service as required by New York Lien Law § 11-B. Respondent does not oppose.

**Relevant Background**

On or about November 16, 2020 and November 20, 2020, Respondent filed two Notice of Mechanic’s Lien with the Clerk of the County of New York against the property at 262 West 125th Street, New York, New York (the “Property”), each in the amount of \$280,300.00 due under a contract with Noble Construction Group, LLC for labor and materials purportedly furnished in connection with the improvement of the Property.

Petitioner contends that only one affidavit of service was filed in connection to the liens. Petitioner contends that the lien filed under Control Number 003985019-01 has a record of an affidavit of service and the lien filed under Control Number 003983035-01 has no record of an affidavit of service.

On December 29, 2020, Petitioner sent a demand to Respondent for a written and verified itemization of the labor and material furnished, and the values thereof, which make up the amount claimed in the lien, and the terms of the contract under which such items were furnished. Petitioner asserts that it also noted that there were two identical liens filed (the "Demand").

Petitioner contends that the Demand was returned as undeliverable and "UNABLE TO FORWARD." Petitioner further contends that a copy of the Demand was sent on January 15, 2021, to the address for Respondent identified on the New York Secretary of State website. Petitioner asserts that to date Respondent has failed to respond to the Demand for an itemized statement nor has one of the liens been withdrawn.

On February 3, 2021, Petitioner commenced this proceeding seeking to compel a response to its demand for a verified itemized statement.

### Legal Standard

Pursuant to Lien Law § 38, an owner or contractor may demand from a lienor a statement setting 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." Lien Law § 38 further provides:

If the lienor shall fail to comply with such a demand within five days after the same shall have been made by the owner or contractor, or if the lienor delivers an insufficient statement, the person aggrieved may petition the supreme court of this state ... for an order directing the lienor within a time specified in the order to deliver to the petitioner the statement required by this section ... The court or a justice or judge thereof shall hear the parties and upon being satisfied that the lienor has failed, neglected or refused to comply with the requirements of this section shall have an

appropriate order directing such compliance. In case the lienor fails to comply with the order so made within the time specified, then upon five days' notice to the lienor, served in the manner provided by law for the personal service of a summons, the court or a justice or judge thereof may make an order canceling the lien.

The purpose of the itemized statement is to apprise those aggrieved by the notice of lien of the details of the lienor's claim. *F.J.C. Cavo Const v Robinson*, 81 AD2d 1005 [4th Dept 1981]. "Itemization of labor and materials is not required with respect to a balance of an agreed price where, as here, it is claimed that the contract has been substantially completed." *819 Sixth Ave. Corp. v T. & A. Assoc., Inc.*, 24 AD2d 446, 446 [1st Dept 1965]. "But it is the rule that where there is a claim for extra work and materials, a detailed itemization of such claim must be furnished." *Id.* "The statement should clearly show the difference between the contract work and that of the extras, with itemization of the labor and material comprising the extras." *Id.* (citation omitted). The lienor must provide "the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of the labor charges." *Id.* "Nothing short of this detail will satisfy the statutory requirement that the statement shall 'set forth the items of labor and/or material and the value thereof which make up the amount for which \* \* \* [a lien is claimed]." *Id.*

New York Lien Law § 11-B states that "[f]ailure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien."

### Discussion

Here, Petitioner served Respondent with a demand to furnish Petitioner a verified itemized statement in writing. To date Respondent has failed to serve a verified itemized statement as required by Lien Law § 38.

Additionally, only one affidavit of service was filed for the lien filed under Control Number 003985019-01 and there was no affidavit of service filed for the lien filed under Control Number 003983035-01. The mechanic's lien filed under Control Number 003983035-01 is cancelled for failure to file an affidavit of service as required by New York Lien Law § 11-B.

Wherefore, it is hereby

ORDERED that Respondent shall produce an itemized statement of (i) the labor and/or material furnished and the value therefor which make up the amount claimed in the lien; and (ii) the terms of the contract under which such items are furnished within five (5) days from the date of service of a copy of this Order with Notice of Entry in the manner provided by law for the personal service of a summons; and it is further

ORDERED that, if Respondent fails to comply with this Order within the time specified, then upon the requisite notice to Respondent, served by Petitioner in the manner provided by law for the personal service of a summons, the Court shall issue an Order directing the cancellation and discharge of the Lien; and it is further

ORDERED that one of the Notice of Mechanic's Lien in the sum of \$280,300.00, filed by Respondent Ekon Goup Inc. on November 20, 2020, with the County Clerk of the County of New York against Petitioner and the property located at 262 West 125th Street, New York, New York filed under Control Number 003983035-01 is hereby vacated; and the County Clerk shall amend its records accordingly.

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

**Dated: March 10, 2021**

ENTER:   
J.S.C.

**HON. EILEEN A. RAKOWER**

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