

<b>York Restoration Corp. v Pedrol Contr. Inc.</b>
2022 NY Slip Op 30003(U)
January 3, 2022
Supreme Court, New York County
Docket Number: Index No. 158553/2021
Judge: Carol R. Edmead
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. CAROL EDMEAD PART 35

*Justice*

-----X

YORK RESTORATION CORP.

Petitioner,

- v -

PEDROL CONTRACTING INC.,

Respondent.

-----X

INDEX NO. 158553/2021

MOTION DATE 10/29/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11,12, 13, 14, 15, 16, 17

were read on this motion to/for MECHANICS LIEN.

Upon the foregoing documents, it is

ORDERED that Petitioner York Restoration Corp.’s application by Order to Show Cause for an order pursuant to Lien Law § 38 directing Respondent Pedrol Contracting Inc. to comply with Petitioner’s Demand for an itemized statement (Motion Seq. 001) is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; 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 ten (10) days.

**MEMORANDUM DECISION**

In this Lien Law special proceeding, Petitioner York Restoration Corp. moves for an order pursuant to Lien Law § 38 directing Respondent Pedrol Contracting Inc. to comply with Petitioner’s Demand for an itemized statement within ten (10) days of said order (Motion Seq. 001). Respondent opposes Petitioner’s motion in its entirety.

**BACKGROUND FACTS**

In August 2018, Petitioner and Respondent entered into a contract (the “Contract”), under which Respondent would rent construction equipment to Petitioner for use on a construction project at 15 East 26<sup>th</sup> Street, New York, New York (the “subject premises”). (NYSCEF doc No. 9, ¶3). The Contract specified that Respondent would provide “ 5 configurations (2 point scaffolds) including 10 motors plus all accessories” and a “rigging license” (NYSCEF doc No. 12). Each configuration cost \$1,200 per month and the rigging license cost an additional \$400 per month, requiring Petitioner to pay a total of \$6,400 per month. (*id.*). Petitioner rented this construction equipment through February 2021. (NYSCEF doc No. 13). Respondent contends that Petitioner failed to make payments throughout the term of the contract and now owes \$128,000. (*id.*)

On July 25, 2021, Respondent filed a Notice of Mechanic’s Lien against the subject premise in New York County. (NYSCEF doc No. 1). On September 27, Petitioner served Respondent with a demand for a verified statement pursuant to Lien Law § 38. (NYSCEF doc No. 4). Respondent did not provide such statement.

On September 29, 2021, Petitioner commenced the special proceeding now before this Court by Order to Show Cause, seeking an order directing Respondent to furnish an itemized statement within ten (10) days pursuant to Lien Law § 38. In opposition, Respondent has submitted an affidavit and exhibits that set forth the labor and materials that constitute the basis for the lien, their value, as well as the terms of the contract. (*see* NYSCEF No. 12, 13). Respondent argues that it has complied with its obligations under the Lien Law and asks that the Court dismiss this proceeding.

### DISCUSSION

Pursuant to Lien Law § 38,

“A lienor who has filed a notice of lien shall, on demand in writing, deliver to the owner or contractor making such demand 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. The statement shall be verified by the lienor or his agent in the form required for verification of notices in section nine of this chapter.”

Lien Law § 9, “Contents of notice of lien,” requires, *inter alia*, the lienor to verify the notice to the effect that the statements in the lien are true to the lienor’s knowledge.

Here, Petitioner argues that under the clear language of § 38, Respondent is required to deliver an itemized statement and failed to do so. Conversely, Respondent maintains that it has complied with all of its obligations for notice of lien, as Petitioner has knowledge of all the requisite information that an itemized statement would provide: (1) a final statement detailing the outstanding amount owed for each month up through February 2021 (a copy of which is provided at NYSCEF doc No. 13) and (2) the original contract between the two parties laying out each’s obligations (NYSCEF doc No. 12). These documents, Respondent argues, provide the material and value which constitutes the basis for the lien and the terms of the contract. Moreover, Respondent’s answer and opposition filed in this proceeding consist of verification statements that comply with § 9 requirements. (*See* NYSCEF doc Nos. 9, 15).

Following review of Respondent’s submissions, the Court finds that Petitioner is not entitled to a further itemized statement. Although the language of § 38 appears to confer an unrestricted right to an itemization of labor and materials, § 38 is entitled “Itemized statement *may* be required of lienor” (emphasis added). Courts have limited the extent to which a party may demand a statement, as § 38 does not establish “an absolute right to an itemized statement” (*F.J.C. Cavo Constr., Inc. v Robinson*, 81 AD2d 1005, 1005 [1981], citing 37 NY Jur, Mechanics’ Liens, § 66). Rather, the purpose of the itemization is to apprise the property owner of the details of the lienor’s claim. (*id.*) and to “enable the petitioner to check the claim.” (*See*

*Matter of 819 Sixth Ave. Corp. v T. & A. Assocs.*, 24 AD2d 446, 446 [1<sup>st</sup> Dept 1965].)

Accordingly, statements are required in certain complex contractual disputes, such as where a lien is based on a quantum-meruit claim (*see Matter of 2269 First Ave Owner LLC v BDM Solutions LLC*, 2019 NY Slip Op 31823[U] at \*5 [Sup Ct., New York County 2019]) or there is an underlying dispute involving the nature and value of work performed (*see Solow v Bethlehem Steel Corp.*, 60 AD2d 826, 826 [1<sup>st</sup> Dept 1978]; *Matter of Plain Ave. Stor., LLC v BRT Mgt., LLC*, 165 Ad3d 1264, 1265 [2d Dept 2018]). In such cases, a comprehensive itemized statement is required to satisfy the “appraisal” requirement.

However, following review of the background of this proceeding, the Court finds that an itemized statement is not required here under § 38. The Contract called for a fixed price per month that Petitioner does not challenge. Petitioner also does not dispute the length of the Contract term or the fact that Respondent sent a final invoice detailing outstanding payments due. Itemization of labor and materials is not required with respect to a balance of an agreed price where a Petitioner does not dispute that the contract has been substantially completed. (*Matter of 819 Sixth Ave. Corp.*, 24 AD2d at 446). Furthermore, as discussed, Respondent has already supplied Petitioner with information setting forth the basis for the lien and the terms of the contract and has also supplied requisite verification. Accordingly, Respondent is not required to provide a further itemized statement under § 38 and the instant proceeding is dismissed as moot.


Based on the foregoing, it is hereby

ORDERED that Petitioner York Restoration Corp.’s application by Order to Show Cause for an order pursuant to Lien Law § 38 directing Respondent Pedrol Contracting Inc. to comply with Petitioner’s Demand for an itemized statement (Motion Seq. 001) is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; 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 ten (10) days.



20270103110935 CEDMEADCC&AC78212746FBE667D00B45E31B4

1/3/2022

DATE

CAROL EDMEAD, 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