

G Bldrs., LLC. v Quality Waste Servs. Corp.
2022 NY Slip Op 31340(U)
April 26, 2022
Supreme Court, New York County
Docket Number: Index No. 160411/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA JAMES

PART 59

Justice

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G BUILDERS, LLC.,

Petitioner,

- v -

QUALITY WASTE SERVICES CORP.,

Respondent.

-----X

INDEX NO. 160411/2019

MOTION DATE 04/01/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for RENEW

ORDER

Upon the foregoing documents, it is

ORDERED that the petitioner's application to renew its motion to vacate the Mechanic's Lien pursuant to New York Lien Law § 19(6) is denied and the proceeding is dismissed; and it is further

ADJUDGED that respondent Quality Waste Services Corp., having an address at 260 Butler Street, Brooklyn, New York 11217, do recover from petitioner G Builders, LLC, having an address at 45 Broadway, New York, New York, costs and disbursements in the amount of \$ _____, as taxed by the Clerk, and that respondent have execution therefor.

DECISION

Petitioner's motion sequence number 001, which sought to vacate the Notice of Mechanic's Lien dated April 3, 2019 (Mechanic's Lien) on the grounds that such Mechanic's Lien was defective on its face, was denied, without prejudice, for lack of proof of any service, even though respondent defaulted (NYSCEF Document Number 22).

Respondent has now appeared by counsel. In opposition to petitioner's herein motion to renew, respondent's counsel argues that this court's dismissal of a prior proceeding, entitled G Builders LLC v Quality Waste Services Corp., Index Number 155531/2019 (New York County Supreme Court), on the grounds of lack of proper service and/or personal jurisdiction over respondent collaterally estops petitioner from prosecuting the herein action, as petitioner has yet to serve respondent at its place of business. This court disagrees with respondent that such decision collaterally estops or is res judicata with respect to the instant, subsequent proceeding. See Landau v LaRossa, Mitchell & Ross, 11 NY3d 8, 13 (2008) (a dismissal that does not indicate with prejudice "lacks a necessary element of res judicata- by its terms such a judgment is not a final determination on the merits".) As the court did not reach the merits in the prior proceeding, there is no collateral estoppel or res judicata effect with respect to the proceeding at bar.

However, by serving, in the herein proceeding, a notice of appearance dated December 2, 2019 (NYSCEF Document Number 10) that directs petitioner to "serve a copy of all papers in the instant action upon the undersigned at the address stated below", without stating that such was a "special appearance", respondent's counsel has waived any objection to service of the amended verified petition, which was filed on February 2, 2021.

The court now reaches the merits of the current petition, wherein petitioner challenges the Mechanic's Lien on a different ground. In its amended petition, petitioner contends that by listing the address of the lienor as c/o its attorney, petitioner did not comply with Lien Law § 9(1), which requires that the notice state "if the lienor is a . . . corporation, the business address of such. . . corporation".

Unlike in Fibernet Telecom Group, Inc. v East Coast Optical Services, 195 Misc2d 461 (Sup Ct, New York County 2002), the subject Mechanic's Lien does not list a post office address but instead sets forth the physical address of respondent's attorney. As in Brothers, Inc. v D.C.M. of New York, LLC, 38 Misc3d 1245(A), *3, "as [such notice] clearly states a physical address where it can be located. . . a creditor could verify the lien's validity or service process". Thus, as it is not apparent from the face thereof that petitioner could not have verified the lien's validity by way of such physical address,

the Mechanic's Lien at bar is not facially defective pursuant to Lien Law § 9(1). Moreover, it cannot be discerned from the face of such Mechanic's Lien that the attorney listed thereon was not respondent's designated agent for personal service pursuant to CPLR 318.

Debra A. James
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<u>4/26/2022</u>			<u>DEBRA JAMES, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE