

**Hudson Meridian Constr. Group, LLC v ML  
Woodwork Inc.**

2022 NY Slip Op 31886(U)

June 15, 2022

Supreme Court, New York County

Docket Number: Index No. 156699/2022

Judge: Carol R. Edmead

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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*

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HUDSON MERIDIAN CONSTRUCTION GROUP, LLC

Petitioner,

- v -

ML WOODWORK INC.,

Respondent.

-----X

**INDEX NO.** 156699/2022

**MOTION DATE** 03/18/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for MECHANICS LIEN.

Upon the foregoing documents, it is

ORDERED AND ADJUDGED that Petitioner Hudson Meridian Construction Group, LLC's application for an order pursuant to Lien Law § 38 directing Respondent ML Woodwork to comply with Petitioner's demand for an itemized statement (Mot. Seq. 001) is granted; and it is further

ORDERED that Respondent is directed to comply with the requirements of Petitioner's demand for an itemized statement pursuant to Lien Law § 38 within twenty (20) days of this Order; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Petitioner 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 Hudson Meridian Construction Group, LLC moves for an order pursuant to Lien Law § 38 directing Respondent ML Woodwork Inc. to comply with Petitioner's demand for an itemized statement within five (5) days of said order. (Motion Seq. 001).

Respondent opposes Petitioner's motion in its entirety.

### **BACKGROUND FACTS**

Petitioner, the general contractor on a construction project (the "Project") located at 1059 Third Avenue, New York, New York (Block 1417, Lot 47) (hereinafter the "Subject Premises"), entered a contract with third party Cassway Contracting Corp. ("Cassway") to perform carpentry work.

On December 18, 2019, Cassway and Respondent purportedly entered into a subcontracting agreement ("the Agreement"), in which Respondent would provide material and labor for the installation of the Project's doors/doorframes, windowsills, shelves, cabinets, closets and other furnishings. (*See* NYSCEF doc No. 13.) In return, the Agreement called for Respondent to receive \$385,000.04, which the parties appear to have amended to \$415,000.04. The copy of the Agreement that Respondent has submitted to the Court has not been executed. Neither party has signed the sections that detail the agreement to pay \$385,000.04 for the project's furnishing installations, and neither party has signed the section that amended the original agreement to \$415,000.04. (*Id.*) Additionally, the section that amends the original price appears as a handwritten paragraph (in contrast to the rest of the contract), but the entire section detailing the duties and obligations of the parties is whitened out except for the price. (*Id.*)

In an affidavit, Michal Lenczewski, Respondent's President, asserts that Respondent fully performed under the terms of the contract and that Cassway failed to pay Respondent the \$415,000.04. (NYSCEF doc No. 12.) Consequently, on November 15, 2021, Respondent filed a Mechanic's Lien with the New York County Clerk against the Project in the amount of \$415,000.04. On November 22, 2021, Petitioner served Respondent with a demand for an itemized statement that set forth the value of labor and materials making up the amount of the lien and the terms of the contract under which Respondent performed its obligations. (NYSCEF doc No. 3.) Respondent did not provide such a statement.

On December 2, 2021, Respondent commenced a foreclosure action on the lien against Cassway and 63rd & 3rd NYC LLC (the owner of the Subject Premises). Respondent did not name Petitioner as a party. (NYSCEF Index No. 160806/2021).

On January 21, 2022, Petitioner commenced the special proceeding now before this Court, seeking an order directing Respondent to furnish the itemized statement within five (5) days pursuant to Lien Law § 38. In opposition, Respondent has submitted an affidavit and exhibits that, it asserts, set forth the labor and materials that constitute the basis for the lien, their value, and the terms of the contract. Respondent argues that it has complied with its obligations under the Lien Law.

## 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.”

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 argues, under *Associated Bldg. Services, Inc. v Pentecostal Faith*, 112 AD3d 1130 [3d Dept. 2013], that § 38 does not establish an absolute right to an itemized statement. (NYSCEF doc No 11.) Rather, since the purpose of itemization is to apprise the property owner of the details of the lienor's claim, § 38 only requires an itemized statement 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 [1st Dept 1978]; *Matter of Plain Ave. Stor., LLC v BRT Mgt., LLC*, 165 Ad3d 1264, 1265 [2d Dept 2018]). Respondent argues that the Agreement does not fall within either category as it sets a fixed contractual price for the materials and labor provided by Respondent. Therefore, Respondent argues (1) that an itemized statement is not required under § 38, and (2) even if § 38 does require such a statement, the Agreement that Respondent provided the Court sufficiently particularizes the subject of the lien.

After a review of the parties' submissions, the Court finds that in the instant application, an itemized statement is required by § 38 and the Agreement provided by Respondents does not sufficiently appraise Petitioner of the subject of the lien. As discussed *supra*, Respondent has not submitted an executed copy of its Agreement with Cassway. Given that the Agreement lacks the parties' signatures and is functionally silent as to the specific duties and obligations related to the amended \$415,000.04 compensation that Cassway would pay Respondent, Respondent has not demonstrated that the lien is based on a fixed contractual price for the materials and labor it provided to the project nor demonstrated the absence of an underlying dispute involving the

nature and value of the work performed. Consequently, Respondent has not satisfied the “appraisal” requirement of § 38. (*See Solow v Bethlehem*, 60 AD2d at 826.)

Lastly, Respondent contends that providing an itemized statement to Petitioner is superfluous given that the lien is already the subject of a pending foreclosure action. In support of its contention, Respondent cites to *Strongback Corp. v N.E.D. Cambridge Ave. Dev. Corp.*, 25 AD3d 392, 392 [1st Dept. 2006]. However, the Court finds *Strongback Corp.* to be inapposite. In *Strongback Corp.*, the First Department reversed the lower court’s holding that, in a foreclosure action, the lienee had to move to compel an itemized statement under §38 before the court could properly grant summary judgment on its Lien Law § 39 counterclaim for willful exaggeration of the amount on the lien. (*Id.* at 393.) In other words, *where a lienee moves to cancel a lien in the lienor’s foreclosure action*, the First Department held that § 38 does not require a lienee to move to compel an itemized statement as such a motion would be “superfluous” given the lienor already bears the burden of establishing its entitlement to payment with sufficient proof. (*Id.*) For *Strongback Corp.* to be applicable such that an itemized statement is superfluous, the lienee must challenge the validity of a lien in the foreclosure action. This obviously requires the lienee to be a named party in the foreclosure action. Here, Petitioner is not a named party and has no ability to cancel the lien in Respondent’s foreclosure action. Should Petitioner seek to challenge the lien, then, it must do so in a separate proceeding. But doing so would require a motion to compel an itemized statement, as Petitioner has done here. (*Matter of Burdick Assoc. owners Corp.*, 131 AD2d 672 [1987].) Consequently, the Court does not find that Respondent’s separate action to foreclose renders Petitioner’s instant motion superfluous.

The Court concludes that Petitioner has demonstrated entitlement to an itemized statement that fully complies with all requirements of Lien Law § 38.

**CONCLUSION**

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that Petitioner Hudson Meridian Construction Group, LLC’s application for an order pursuant to Lien Law § 38 directing Respondent ML Woodwork to comply with Petitioner’s demand for an itemized statement (Mot. Seq. 001) is granted; and it is further

ORDERED AND ADJUDGED that Respondent is directed to comply with the requirements of Petitioner’s demand for an itemized statement pursuant to Lien Law § 38 within twenty (20) days of this Order; and it is further

ORDERED AND ADJUDGED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED AND ADJUDGED that counsel for Petitioner shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.



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6/15/2022  
DATE

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CAROL 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