

Metro Elec. Contrs., Inc. v Rosemark Contrs., Inc.

2022 NY Slip Op 32222(U)

July 7, 2022

Supreme Court, Kings County

Docket Number: Index No. 6761/2014

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on 7th the day of July, 2022.

P R E S E N T:
Hon. Wayne P. Saitta, Justice.

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METRO ELECTRICAL CONTRACTORS, INC.,

Plaintiff, Index No. 6761/2014

-against-

ROSEMARK CONTRACTORS, INC., E & E MEDICAL BLDG.,
L.L.C. COUNTY CLERK OF THE COUNTY OF KINGS
and the FINANCE ADMINISTRATOR OF THE CITY OF
NEW YORK,

DECISION ORDER
AND JUDGEMENT

Defendant(s).
-----X

The following papers numbered on this motion:

	<u>NYSCEF Doc Numbers</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	4-6, 17
Answering Affidavit (Affirmation) _____	23, 25
Reply Affidavit (Affirmation) _____	38
Supplemental Affidavit (Affirmation) Pleadings – Exhibits _____	7-16, 24-34, 39
Stipulations – Minutes _____	
Filed Papers _____	

This action involves a mechanics’ lien in which Plaintiff METRO ELECTRICAL CONTRACTORS, INC. (METRO ELECTRICAL) seeks to foreclose on a mechanics lien for work it performed at 2748 Ocean Avenue, owned by Defendant E & E MEDICAL BLDG (E & E) pursuant to a contract with Defendant ROSEMARK CONTRACTORS (ROSEMARK). E & E contracted with ROSEMARK for general construction services for the premises. Rosemark then subcontracted the electrical and fire alarm work to METRO ELECTRICAL. Plaintiff claims work was performed complying with the contract, but have

not yet received full compensation. Plaintiff METRO ELECTRICAL filed a mechanics' lien for \$163,579.68 on the premises on May 29, 2013, and Defendant E & E subsequently deposited \$163,660.36 with the Kings County Clerk's Office to discharge the lien.

Plaintiff now moves for summary judgment in the amount of \$163,660.36, as well as an order directing the Finance Administrator to release the money deposited in Court to discharge the lien.

Plaintiff argues it is entitled to summary judgment as a third-party beneficiary of a Settlement Agreement made between members of Defendant E&E.

Subsequent to the filing of the lien, the principals of Defendants E & E MEDICAL BLDG and ROSEMARK CONTRACTORS entered into a Settlement Agreement on August 29, 2013 which settled an action between E & E members Morris Friedman, Saul Rosenblum and Jimmy Nassour. The Settlement Agreement details a dispute between the Defendants who were partners in the ownership of the property. Rosenblum was also the principal of ROSEMARK. The Settlement Agreement states:

“Metro Electrical Contractors, Inc. (“Metro Electrical”) filed a \$163,660.36 lien on the Property. A cash deposit was posted for the full amount of the claim with the King's County Clerk's Office (the “Cash Deposit”). Upon execution of the NYEE Litigation Settlement Agreement, the Collateral Release Agreement and full compliance with paragraph 3 above, Saul shall take all required steps to withdraw the Cash Deposit and pay Metro Electrical \$163,660.36 in exchange for a full satisfaction of its lien and a general release in favor of E and E, and written agreement by Metro Electrical that will keep the terms of the settlement confidential. E and E agrees to execute any necessary documents to allow the release of the Cash Deposit. Saul shall provide to E and E all documents relating to the settlement within ten (10) days of the receipt.”

The Agreement clearly provides that Defendant METRO ELECTRICAL are to be paid the full value of their lien. Neither ROSEMARK nor E & E objected to the invoices,

or the quality of work performed by Plaintiff, therefore the counterclaim of willful exaggeration should be dismissed. The Settlement Agreement goes on to further indicate that specifically Saul Rosenblum is to withdraw the cash deposit from the Kings County Clerk's Office and relinquished such responsibility from the other partners.

Plaintiff METRO ELECTRICAL was explicitly made part of the Settlement Agreement and the owners of the property agreed to pay Plaintiff the full amount of the lien and to cooperate with each other to release the funds deposited into Court. "A third party may recover as an intended beneficiary of a contract between others only if it is clear that the parties proposed to confer a benefit on that third party; furthermore, that benefit must be more than merely incidental to the benefits afforded the contracting parties. It must be such as to evince an intent to permit enforcement by the third party." (*Binghamton Masonic Temple, Inc. v. City of Binghamton*, 213 A.D.2d 742, 623 N.Y.S.2d 357, 360 (3d Dep't 1995) (relying upon *Fourth Ocean Putnam Corp. v. Interstate Wrecking Co.*, 66 N.Y.2d 38, 495 N.Y.S.2d 1, 5, 485 N.E.2d 208 (N.Y.1985)). The best evidence of an intent to benefit a third party is to be found in the language of the contract itself. (*Nepco Forged Prods., Inc. v. Consolidated Edison Co. of N.Y.*, 99 A.D.2d 508, 470 N.Y.S.2d 680, 681 (2d Dep't 1984)).

Plaintiff has established they were an intended third-party beneficiary of the Settlement Agreement and pursuant to its terms entitled to release of the \$163,660.63 deposited with the Court.

WHEREFORE, it is ORDERED that Plaintiff's motion for summary judgment as to foreclosure of a mechanics' lien is granted and Plaintiff METRO ELECTRICAL CONTRACTORS (offices at 150 52nd street, Brooklyn, New York 11218) is awarded

judgment against Defendant ROSEMARK CONTRACTORS, INC. (offices at 783 East 4th street, Brooklyn, New York 11232) in the amount of \$163,579.68; and it is further

ORDERED that the FINANCE ADMINISTRATOR OF THE CITY OF NEW YORK is directed to release to Plaintiff METRO ELECTRICAL CONTRACTORS the \$163,660.63 deposited with the Court to discharge their mechanics lien .

This constitutes the decision order and judgment of the Court.

ENTER,



J.S.C.