

King Steel Iron Work Corp. v SDS Leonard, LLC

2022 NY Slip Op 32360(U)

July 5, 2022

Supreme Court, Kings County

Docket Number: Index No. 517414/2021

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 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 the 5th day of July 2022.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

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KING STEEL IRON WORK CORP.,
Plaintiff(s)

Index No: 517414/2021
Motion Seq. #1 & #2

-against-

DECISION

SDS LEONARD, LLC, BROOKLYN BUREAU OF COMMUNITY SERVICE d/b/a BROOKLYN COMMUNITY SERVICES f/k/a BROOKLYN BUREAU OF CHARITIES, 285 SCHERMERHORN, LLC, SWING STAGING LLC, INFINITE CONSULTING CORP., INFINITE SAFETY QUALITY & CONSTRUCTION MANAGEMENT, INC., "ABC COMPANY No. 1" through "ABC COMPANY No. 100" and "JOHN DOE No. 1" through "JOHN DOE No. 100", said names being fictitious, true names being those unknown individuals and entities that may have an interest in the real property known as 285 Schermerhorn Street, Brooklyn, New York 11217, and designated on the Official Tax Map of the City of New York as Lots 1001 and 1002, Block 166

Defendant(s)
-----X

The following e-filed papers considered herein:

NYSCEF E-filed docs

Notice of Motion/Affirmation in Support/Memorandum of Law/Affidavit/Exhibits Annexed/Reply.....	11-21; 70-74
Affirmation in Opposition/Exhibits Annexed.....	68-69
Notice of Motion/Affirmation in Support/Memorandum of Law/Affidavit/Exhibits Annexed/Reply.....	24-31; 75-79
Affirmation in Opposition/Exhibits Annexed.....	66-67

In this matter, ("Plaintiff") King Steel Iron Work Corp., moves (Motion Seq. 1) pursuant to CPLR § 3211 (a)(1) and (a)(7) for an order granting dismissal of Defendant SDS Leonard LLC's, ("SDS"), seventeenth affirmative defense and fourth counterclaim alleging slander of title. Plaintiff also moves (Motion Seq. 2) pursuant to CPLR § 3211 (a)(1) and (a)(7) for an order granting dismissal of Defendant 285 Schermerhorn, LLC's fifteenth affirmative defense and fourth counterclaim alleging slander of title. Defendants SDS Leonard LLC and 285 Schermerhorn LLC

have opposed these motions on the grounds that Defendants have properly alleged their affirmative defenses and slander of title claims.

This action arises out of an alleged contractual agreement between Plaintiff and Defendants.¹ Plaintiff's Complaint alleges that Defendant SDS serves as a general contractor for a construction project located at 285 Schermerhorn St. Brooklyn, New York 11217 ("The Premises"). The Brooklyn Bureau of Community Services ("Property Owner") holds title to the Premises and leases it to 285 Schermerhorn LLC. According to the complaint, on or about May 8, 2019, SDS hired and engaged Plaintiff to perform work in connection with the project on the Premises. From on or about May 9, 2019, to on or about June 1, 2020, Plaintiff claims to have duly performed the preliminary work, labor, and services and fabricated the custom preliminary materials necessary to begin the actual construction. Plaintiff states that all of the custom, preliminary materials were fabricated and stored by its facility pending approval of the shop drawings for the project. On October 19, 2020, within 8 months after the last date and time on which work, labor, services, and/or materials were provided to the project, Plaintiff filed a Notice of Mechanic's Lien against the Premises alleging that at the time that the notice was filed, that SDS owed Plaintiff at least \$360,000.00. The Mechanic's Lien was served upon the Defendants on December 30, 2019. On or about July 14th, 2021, Plaintiff commenced this action by filing a Summons and Verified Complaint and Notice of Pendency. The Defendants have answered and served affirmative defenses and counterclaims. On March 11, 2022 parties stipulated to cancel the Notice of Pendency.

Defendant SDS, in their Verified Answers and Counterclaims argue that in order to facilitate construction they commenced a bidding process to find a company to supply, fabricate, and install the steel superstructure on The Premises. SDS states that during the bidding process to facilitate construction they signed a letter of intent to use Plaintiff's services but does not owe King Steel any money relating to the project because SDS did not enter into a contractual agreement with the Plaintiff to perform work at the Premises. SDS further claims that they did not in any way induce Plaintiff to begin work on the Project and that Plaintiff was neither authorized to do any work on behalf of them and did not provide any work for them. SDS asserts that Plaintiff, in filing a mechanic's lien against the Premises, has exaggerated the amount owed and that "the wrongful filing of the mechanic's lien has thus cast a cloud upon Defendant's title to or interest in the

¹ Neither party has attached the alleged contractual agreement or letter of intent with their moving papers.

Premises” resulting in special damages of at least \$50,000.00. In addition, SDS asserts a claim of slander of title against King Steel.

Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (*Leon v Martinez*, 84 NY2d 83, 88 [1994]; *Heaney v. Purdy*, 29 NY2d 157 [1971]). In considering a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon; Meyer v North Shore–Long Is. Jewish Health SYS., Inc.*, 137 AD3d 880, 880-881 [2d Dept 2016]; *Cecal v Leader*, 74 AD3d 1180, 1181 [2nd Dept 2010]; *Dye v Catholic Med. Ctr. of Brooklyn & Queens*, 273 AD2d 193 [2d Dept 2000]). The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). The court “is not concerned with determinations of fact or the likelihood of success on the merits” (*Detmer v Acampora*, 207 AD2d 477, 477 [2d Dept 1994]; *see Stukuls v State of New York*, 42 NY2d 272, 275 [1977]). Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss (*EBC I, Inc. v Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]).

The elements of a slander of title are (1) a communication falsely casting doubt on the validity of complainant’s title, (2) reasonably calculated to cause harm, and (3) resulting in special damages (*Brown v Bethlehem Terrace Assocs.*, 136 AD2d 222, 224 [3rd Dept. 1988]; 39 *College Point Corp. v Transpac Capital Corp.*, 27 AD3d 454 [2nd Dept. 2006]). In instances where a *lis pendens* or notice of pendency simply states that the nature of the action commenced, and the statement accurately reflects the action filed, there is no “communication falsely casting doubt of the validity of complainant’s title” and the claim should be dismissed. (*Brown*, at 224-225; *see also 34-35 May Assocs. v Mayloc Assocs.*, 162 AD2d 389, 389-390 [1st Dept. 1990]; *Alexander v Scott*, 286 AD2d 692 [2d Dept. 2001]; *Seidman v Industrial Recycling Properties Inc.*, 83 AD3d 1040 [2nd Dept. 2011]). Thus, Defendants’ contention that Plaintiff’s filing of a Notice of Pendency was improper is insufficient to give rise to a slander of title claim.

Assuming, arguendo that Defendants’ claim that Plaintiff filing of a mechanic’s lien cast a cloud of title on the Premises, it is still insufficient to satisfy the elements of a slander of title

claim. Defendants correctly cite *Cnb Contr. Corp. v Gs Utah Wind Acquisition LLC*, 2019 NY Misc. LEXIS 20885 at *11 (Sup. Ct. Westchester County 2019) which holds that one may be liable for willfully exaggerating a mechanic's lien. However, that case does not address slander of title claims at all. Moreover, it is well established that inaccuracy in the amount of the lien, if no exaggeration is intended, does not void a mechanic's lien because willfulness also must be shown (see *Cnb Contr. Corp.* at 8; *Goodman v Del-Sa-Co Foods*, 15 NY2d 191 [1965]; *Blair v Ferris*, 150 AD3d 1365 [3d Dept 2017]; *Pelc v Berg*, 68 AD3d 1672 [4th Dept. 2009]). The fact that a lien may contain improper charges or mistakes does not, in and of itself, establish that a plaintiff willfully exaggerated a lien (*Blair v Ferris*, supra; *Park Place Carpentry & Bldrs., Inc. v DiVito*, 74 AD3d 928 [2d Dept 2010]). It is up to the party opposing the lien to show that the amounts set forth in the lien were intentionally and deliberately exaggerated (*Garrison v All Phase Structure Corp.*, 33 AD3d 661 [2d Dept 2006]). In this case, Defendants have not proffered any evidence or explanation as to how or why the Plaintiff willfully exaggerated the lien, but merely state in a conclusory fashion that they did and as a result Defendants suffered harm. Defendants have also failed to properly plead special damages as required under the elements of a slander of title claim.

The second case that Defendants cite, *Flowcon Inc., v Andiva LLC*, 2021 NY Slip Op 30294(U), is inapplicable in this matter. While that case mentions that a party asserted a slander of title claim as a cause of action, the claim is never addressed as the predominant issue in that case pertains to an arbitration clause. Thus, Defendants are unable to use that case to support that a slander of title claim is proper when challenging an exaggerated lien.²

Defendant 285 Schermerhorn, LLC adopts the same arguments, affirmative defenses and counterclaims as Defendant SDS Leonard LLC in opposition to Plaintiff's motion (Motion Seq. 2). Therefore, a slander of title claim cannot be pursued based on the facts of this case.

²The Court also notes, Plaintiff and SDS were previously parties in a separate action decided on December 6, 2021, under Index number 52101/2021 (Ruchelsman, J.). Plaintiff initiated that lawsuit alleging causes of action for breach of contract, unjust enrichment, and violations of Lien Law. SDS answered and served affirmative defenses and counterclaims alleging an exaggeration of a mechanic's lien and slander of title, to which the Plaintiff moved for summary judgment dismissing the claims. The Court held that a slander of title claim cannot be pursued in New York based on filing a notice of pendency or an exaggerated mechanic's lien and dismissed the counterclaim and affirmative defense.

Accordingly, Plaintiff motion (Motion Seq. 1 and 2) for a motion to dismiss Defendant SDS Leonard LLC's seventeenth affirmative defense and fourth counterclaim alleging slander of title as well as Defendant 285 Schermerhorn, LLC's fifteenth affirmative defense and fourth counterclaim alleging slander of title is granted.

This constitutes the order and decision of the Court.



J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**