

498 W. End Ave. LLC v DCBE Contr. Inc.
2022 NY Slip Op 32996(U)
September 7, 2022
Supreme Court, New York County
Docket Number: Index No. 652421/2022
Judge: Laurence L. Love
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.

PRESENT:	PART
<u>HON. LAURENCE L. LOVE</u>	63M
<i>Justice</i>	
-----X	INDEX NO. <u>652421/2022</u>
498 WEST END AVENUE LLC	MOTION DATE <u>08/18/2022</u>
Petitioner,	MOTION SEQ. NO. <u>001</u>
- v -	
DCBE CONTRACTING INC.,	DECISION + ORDER ON MOTION (AMENDED)
Respondent.	
-----X	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN .

Upon the foregoing documents, the Petition is decided as follows:

Petitioner 498 West End Avenue LLC (“Petitioner”), by and through its attorneys,
Clark Guldin Attorneys at Law, having duly moved this Court for an Order:

(i) pursuant to CPLR 2510 and Lien Law §§17 and 19(3) terminating the following four Notices Under Mechanic's Lien Law each filed and docketed by Respondent DCBE Contracting Inc. ("Respondent") on or about June 22, 2018 on the grounds that each Lien is no valid and has expired by operation of law:

a. Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1401, 1402, 1403, 1404, 1407, and 1408 as shown on the Land and Tax Map of the County of New York (the “First Lien”) which lien was discharged in favor of Surety Bond No. 800024383, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred Fifty and 00/100ths (\$125,950.00)

dollars issued by Atlantic Specialty Insurance Company, as surety, and 498 West End Avenue LLC, as principal;

b. Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1409, 1410, 1411, 1412, 1413, and 1416 as shown on the Land and Tax Map of the County of New York (the “Second Lien”) which lien was discharged in favor of Surety Bond No. 800024369, filed on or about January 3, 2029, in the amount of One Hundred Twenty Five Thousand Nine Hundred Fifty and 00/100ths (\$125,950.00), dollars issued by Atlantic Specialty Insurance Company, as surety, and 498 West End Avenue LLC, as principal;

c. Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1419, 1421, 1422, 1423, 1424, and 1428 as shown on the Land and Tax Map of the County of New York (the “Third Lien”) which lien was discharged in favor of Surety Bond No. 800024382, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred Fifty and 00/100ths (\$125,950.00) dollars issued by Atlantic Specialty Insurance Company, as surety, and 498 West End Avenue LLC, as principal; and

d. Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1432, 1433, 1434, 1435, and 1436, as shown on the Land and Tax Map of the County of New York (the “Fourth Lien”) which lien was discharged in favor of Surety Bond No. 800024380, filed on or about June 24, 2019, in the amount of One Hundred

Twenty Five Thousand Nine Hundred Fifty and 00/100ths (\$125,950.00) dollars issued by Atlantic Specialty Insurance Company, as surety, and 498 West End Avenue LLC, as principal;

(ii) directing the County Clerk, New York County, to vacate and cancel each of the First Lien, the Second Lien, the Third Lien, and the Fourth Lien of record and to enter upon the mechanic's lien docket, or other record of liens maintained by the County Clerk, opposite the endorsement of each of the First Lien, the Second Lien, the Third Lien, and the Fourth Lien, a statement that it has been vacated and canceled by virtue of said Order;

(iii) cancelling and vacating: (a) Lien Discharge Bond No. 800024383 as to the First Lien; (b) Lien Discharge Bond No. 800024369 as to the Second Lien; (c) Lien Discharge Bond No. 800024382 as to the Third Lien; and (d) Lien Discharge Bond 800024380 as to the Fourth Lien on the ground that each of the First Lien, the Second Lien, the Third Lien, and the Fourth Lien is no longer valid and has expired by operation of law;

(iv) directing the County Clerk, New York County to cancel and release Lien Discharge Bond Nos. 800024383, 800024369, 800024382, and 800024380;

(v) discharging all parties of any liability or obligation thereunder against Lien Discharge Bond Nos. 800024383, 800024369, 800024382, and 800024380 or the First Lien, the Second Lien, the Third Lien, or the Fourth Lien; and

(vi) granting Petitioner such other and further relief as the Court deems just and proper,

NOW upon reading and filing of Petitioner's Verified Petition, dated July 13, 2022, together with the exhibits annexed thereto, all submitted in support of Petitioner's application; and there being no opposition by Respondent in opposition to Petitioner's application; and Petitioner's

application having come on to be heard by the Court on August 18, 2022, and having been submitted thereon, and due deliberation having been had thereon; it is hereby

ORDER AND ADJUDGED, that Petitioner's application is granted in its entirety; and it is further

ORDERED AND ADJUDGED, that the following Notices Under Mechanic's Lien Law, filed and docketed by Respondent on or about June 22, 2018 shall be vacated, discharged and cancelled as a matter of Law:

- a. the First Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1401, 1402, 1403, 1404, 1407, and 1408 as shown on the Land and Tax Map of the County of New York;
- b. the Second Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1409, 1410, 1411, 1412, 1413, and 1416 as shown on the Land and Tax Map of the County of New York;
- c. the Third Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1419, 1421, 1422, 1423, 1424, and 1428 as shown on the Land and Tax Map of the County of New York; and
- d. the Fourth Lien in the amount of \$114,500.00 against the premises known and described as 498 West End Avenue, New York, New York 10024, said premises being situated in Block 1231, Lots 1432, 1433, 1434, 1435, and 1436, as shown on the Land and Tax Map of the County of New York; and it is further

ORDERED AND ADJUDGED, that the Clerk of Court is hereby directed to immediately vacate, discharge, and cancel the aforesaid First Lien, Second Lien, Third Lien, and Fourth Lien from the record and enter a statement upon the mechanic's lien docket and all other indices and records maintained by the County Clerk, opposite the endorsement of said Mechanic's Liens, a statement that each of the First Lien, the Second Lien, the Third Lien, and the Fourth Lien has been vacated, discharged and cancelled by virtue of this Order; and it is further

ORDERED AND ADJUDGED, that the following Mechanic's Lien Discharge Bonds, each underwritten by Atlantic Specialty Insurance Company, as surety, and 498 West End Avenue LLC, as principal, shall be vacated, canceled and returned to Petitioner or its counsel pursuant to CPLR 2510:

- a. Lien Discharge Bond No. 800024383, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the First Lien filed against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1401, 1402, 1403, 1404, 1407, and 1408 as shown on the Land and Tax Map of the County of New York;
- b. Lien Discharge Bond No. 800024369, filed on or about January 3, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the Second Lien against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1409, 1410, 1411, 1412, 1413, and 1416 as shown on the Land and Tax Map of the County of New York;
- c. Lien Discharge Bond No, 800024382, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the Third Lien against certain property known as 489

West End Avenue, New York, New York being in Block 1231, Lots 1419, 1421, 1422, 1423, 1424, and 1428 as shown on the Land and Tax Map of the County of New York; and

d. Lien Discharge Bond 800024380, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the Fourth Lien filed against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1432, 1433, 1434, 1435, and 1436 as shown on the Land and Tax Map of the County of New York; and it is further

ORDERED AND ADJUDGED, that the Clerk of the Court is hereby directed to immediately vacate and discharge the following Mechanic's Lien Discharge Bonds from the record and enter a statement upon the mechanic's lien docket and all other appropriate indices and records maintained by the County Clerk, opposite the endorsement of said bonds, that said bonds have been vacated and canceled by virtue of this Order:

a. Lien Discharge Bond No. 800024383, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the First Lien filed against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1401, 1402, 1403, 1404, 1407, and 1408 as shown on the Land and Tax Map of the County of New York;

b. Lien Discharge Bond No. 800024369, filed on or about January 3, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the Second Lien against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1409, 1410, 1411, 1412, 1413, and 1416 as shown on the Land and Tax Map of the County of New York;

c. Lien Discharge Bond No, 800024382, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the Third Lien against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1419, 1421, 1422, 1423, 1424, and 1428 as shown on the Land and Tax Map of the County of New York; and

d. Lien Discharge Bond 800024380, filed on or about June 24, 2019, in the amount of One Hundred Twenty Five Thousand Nine Hundred and Fifty and 00/100ths (\$125,950.00) Dollars discharging the Fourth Lien filed against certain property known as 489 West End Avenue, New York, New York being in Block 1231, Lots 1432, 1433, 1434, 1435, and 1436 as shown on the Land and Tax Map of the County of New York; and it is further

ORDERED AND ADJUDGED, that any and all liabilities or obligations of any party under said Bonds (*i.e.*, Lien Discharge Bond Nos. 800024383, 800024369, 800024382, and 800024380) or the Mechanic's Liens (*i.e.*, the First Lien, the Second Lien, the Third Lien, and the Fourth Lien) shall be completely discharged.

<u>9/7/2022</u>			
DATE		LAURENCE L. LOVE, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ DENIED	☐ NON-FINAL DISPOSITION
	☒ GRANTED		☐ GRANTED IN PART
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ OTHER
			☐ REFERENCE