AD Renovation Solution Inc. v Pielet
2022 NY Slip Op 34025(U)
November 29, 2022
Supreme Court, New York County
Docket Number: Index No. 151227/2022
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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AD RENOVATION SOLUTION INC.

Plaintiff,

- v -

NEELY PIELET, ATLANTIC SPECIALTY INSURANCE COMPANY,

Defendant.

INDEX NO. 151227/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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NEELY PIELET

Plaintiff,

-against-

DANIEL LUZON, NY RENOVATIONS SOLUTIONS, INC.

Defendant.

Third-Party
Index No. 595378/2022

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

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

Defendant Pielet's motion to discharge the mechanics lien is denied.

Background

This action arises out of unpaid invoices for construction work performed on defendant Pielet's property. It appears that third-party defendant Daniel Luzon has at least two corporations, plaintiff AD Renovation Solution, Inc. ("AD") and third-party defendant NY Renovations Solutions, Inc. ("NY").

Although AD is the plaintiff, Pielet alleges that she entered into a contract for the construction work with third-party defendants Daniel Luzon and NY; as proof, she submits a contract she signed with him as "Contractors" on third party defendant NY's letterhead (NYSCEF Doc. No. 13). She also submits multiple invoices from NY to her.

AD brought suit for breach of contract demanding defendant Pielet pay an outstanding sum of $278,625.00, for which AD filed a mechanics lien. Defendant Pielet answered and filed third-party claims against third-party defendants Mr. Luzon and NY Renovations Solutions, Inc. According to Pielet, the work performed on her property was unprofessional, less than satisfactory and shoddy. Pielet also maintains that she contracted with NY and Mr. Luzon, not AD. He also claims that the outstanding lien amount is for exaggerated work that defendant Pielet never requested be completed on her property.

Pielet brings this order to show cause seeking to vacate the mechanic's lien filed by AD pursuant to Lien Law §§ 19(6) and 39. Pielet alleges that AD does not have standing to foreclose on its mechanic's lien and NY, the general contractor with whom Pielet contracted, is not a licensed home improvement contractor. As stated above, to support her contention that she contracted with NY and not AD, Pielet provides a contract on NY letterhead and multiple invoices sent by NY to Pielet. Pielet also contends that AD is a subcontractor of NY, and because NY is not licensed, AD does not have standing to enforce the lien even if AD is licensed. Pielet also claims that the lien amount is for extra charges for work she never agreed to have performed. Finally, Pielet contends that property owners are not liable to subcontractors without express consent, and because AD and defendant Pielet are not contracting parties, AD cannot recover under a quasi-contract theory.

In response, Mr. Luzon contends that defendant Pielet contracted with AD, received numerous invoices from AD, and posted a bond for the lien filed by AD. In support of his response, Mr. Luzon provides a contract signed by himself and Pielet with AD at the letterhead. Mr. Luzon also provides invoices, proof of license, and a certificate of insurance. Mr. Luzon contends that AD is licensed, is the party to the contract, and the fact his office may have used a letterhead for NY should have no bearing on the merits of this case.

Because the order to show cause did not provide for reply papers, the Court will not consider the reply and sur-reply.

Discussion

Pursuant to NY Lien Law § 39, "[i]n any action or proceeding to enforce a mechanic's lien upon a private or public improvement or in which the validity of the lien is an issue, if the court shall find that a lienor has willfully exaggerated the amount for which he claims a lien as stated in his notice of lien, his lien shall be declared to be void and no recovery shall be had thereon." A determination of willful exaggeration requires proof that the lienor "intentionally and deliberately" exaggerated the lien amount (*Pratt Gen. Contrs. v Trappey*, 177 AD2d 566, 568, 576 NYS2d 160 [2nd Dept 1991]).

Defendant Pielet has not successfully met her burden to cancel the subject mechanic's lien. There are two issues here. First, there is an issue of fact as to the identity of the party with which defendant Pielet contracted. The contract she submitted were with NY while plaintiff AD submits a contract (that appears to be for the same work and the same amount) it entered into with defendant. The parties do not deny that a contract exists, however the parties dispute which one is valid. The Court cannot decide which is the real contract on these papers- that is left to the

finder of fact. Discovery will be necessary. And the Court cannot reach Pielet's argument about whether NY was licensed in New York because it is unclear whether she contracted with that party on this record.

Second, the Court finds that there are issues of fact with respect to whether the lien was exaggerated. Pielet contends that she challenged the bills and disputes certain extra charges billed to her. For one charge she responded "LOL" and for another charge she responded with "???" (NYSCEF Doc. No. 25). Although these responses may support Pielet's belief that she was overcharged, they do not constitute conclusive proof that the amount sought by plaintiff was exaggerated. Moreover, plaintiff maintains that the work he performed was "in accordance with the terms set forth in the Contract," (NYSCEF Doc. No. 29).

This is not a case where the moving defendant can conclusively show that the plaintiff failed to do any work on her property. Rather, defendant Pielet disputes the amount sought by plaintiff (and also disputes that she contracted with plaintiff). The exaggeration claim requires the parties to engage in discovery about the scope and quality of the work performed and is not an appropriate basis to cancel the lien. Nor can the Court determine which of the contracts and invoices are correct. Simply put, the Court declines to cancel the subject mechanic's lien because the Court cannot make a credibility determination at this stage of the case.

Accordingly, it is hereby

ORDERED that defendant Pielet's motion to vacate the mechanic's lien is denied.

Preliminary conference: January 11, 2023 at 10:30 a.m.

By January 4, 2023, the parties are directed to upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a preliminary conference is necessary (i.e., if the parties agree, then an in-person preliminary conference may not be required).

11/29/2022
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE