

Brooklyn Chophouse Times Sq. LLC v OMD I Corp.
2022 NY Slip Op 34166(U)
December 8, 2022
Supreme Court, New York County
Docket Number: Index No. 159805/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

BROOKLYN CHOPHOUSE TIMES SQUARE LLC

Petitioner,

- v -

OMD I CORP.,

Respondent.

-----X

INDEX NO. 159805/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for MECHANICS LIEN.

The petition for various relief is decided as described below.

Background

Petitioner seeks to discharge a mechanic’s lien and an itemized statement concerning the lien filed by respondent against a property owned by petitioner. Petitioner contends that the lien should be cancelled because it was filed against “Brooklyn Chophouse LLC,” an entity that petitioner claims does not exist. It maintains that counsel for respondent asserted he would amend the lien but has not done so.

In opposition, respondent stresses that the entity with which it contracted was identified as Brooklyn Chophouse LLC in the parties’ contract. It points out that the Lien Law requires it to name the party with whom it contracted in a lien. Respondent stresses that under the Lien Law it can also seek to amend or re-file the notice of mechanic’s lien and its time to do so has not yet expired. It also observes that if it seeks an amendment to the lien that names petitioner, it would

not be naming the entity in the construction contract. Respondent questions why petitioner does not simply bond the lien.

Discussion

Pursuant to Lien Law § 9(3), “The notice of lien shall state: The name of the person by whom the lienor was employed, or to whom he furnished or is to furnish materials; or, if the lienor is a contractor or subcontractor, the person with whom the contract was made.” The contract at issue is between Brooklyn Chophouse LLC and respondent (NYSCEF Doc. No. 16 at 1). Therefore, the Court denies the branch of the petition that seeks to discharge the mechanic’s lien. That petitioner claims that Brooklyn Chophouse LLC is not the owner of the premises or even an existing entity are all issues that may arise later in connection with respondent’s ability to recover (assuming, of course, that respondent is entitled to any damages). But, on these papers, the Court cannot discharge a mechanic’s lien where contractor filed it against the entity with whom it contracted to perform work.

The Court recognizes the concerns raised by respondent about amending the lien to name an entity not named in the contract. Ideally, the best course of action would be for the parties to reach some sort of an agreement to amend the contract to reflect that it was between petitioner and respondent or simply agree to litigate the lien on the merits. Unfortunately, this Court cannot force the parties to settle an issue.

However, the Court grants the branch of the petition that seeks to compel respondent to submit an itemized statement pursuant to Lien Law § 38.

Lien Law § 38 provides that:

“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 the verification of notices in section nine of this chapter. If the lienor shall fail to comply with such a demand within five days after the same shall have been made by the owner or contractor, or if the lienor delivers an insufficient statement, the person aggrieved may petition the supreme court of this state or any justice thereof, or the county court of the county where the premises are situated, or the county judge of such county for an order directing the lienor within a time specified in the order to deliver to the petitioner the statement required by this section. Two days' notice in writing of such application shall be served upon the lienor. Such service shall be made in the manner provided by law for the personal service of a summons. The court or a justice or judge thereof shall hear the parties and upon being satisfied that the lienor has failed, neglected or refused to comply with the requirements of this section shall have an appropriate order directing such compliance. In case the lienor fails to comply with the order so made within the time specified, then upon five days' notice to the lienor, served in the manner provided by law for the personal service of a summons, the court or a justice or judge thereof may make an order canceling the lien.”

Respondent must furnish a detailed itemized statement to petitioner on or before January 12, 2023. If respondent fails to respond or provide a sufficient response, then petitioner may, as provided above, make the appropriate application to cancel the lien (*see e.g., DePalo v McNamara*, 139 AD2d 646, 527, NYS2d 283 [2d Dept 1988] [canceling a lien pursuant to Lien Law § 38 after the lienor failed to submit a sufficient statement as directed by the Court]). The Court declines to cancel the lien on these papers because there is no basis to do so, such as a finding that the lien was willfully exaggerated.

Accordingly, it is hereby

ORDERED that the petition is granted only to the extent that respondent must furnish a detailed itemized statement to petitioner on or before January 12, 2023 and denied with respect to the remaining relief requested; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of petitioner and against respondent WITHOUT costs or disbursements upon presentation of proper papers therefor.

<u>12/8/2022</u> DATE					 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE