

Benfield Partners, Inc. v Home Record LLC
2023 NY Slip Op 30056(U)
January 6, 2023
Supreme Court, New York County
Docket Number: Index No. 157655/2022
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

BENFIELD PARTNERS, INC.,
Plaintiff,

- v -

HOME RECORD LLC, NYJE, LLC
Defendant.

-----X

INDEX NO. 157655/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 37, 41, 42, 43

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. Defendant Home Record LLC’s (“Home Record”) motion (MS001) to compel plaintiff to serve a verified Itemized Statement pursuant to Lien Law § 38 is denied as moot in light of the information provided by plaintiff in opposition. Plaintiff’s motion (MS002) for leave to amend is granted without opposition.

Discussion

Home Record contends that it, as a lessee of a property located at 74 Bowery, entered into a contract with plaintiff to do various work at the premises including millwork, lighting and door installation. It claims that plaintiff later filed a notice of mechanic’s lien on June 29, 2022.

Home record contends that on November 10, 2022, it filed a surety bond in order to discharge the subject lien.

MS001

In this motion, Home Record seeks an itemized statement to justify the amount plaintiff seeks from Home Record for the work performed. In opposition, plaintiff provides what it claims is a breakdown of the costs and charges.

The Court finds that these records (NYSCEF Doc. No. 42) provide ample information about the amount sought by Home Record. It includes specific line items as well as invoices (*id.*). In this Court's view, this information gives the requisite notice to Home Record such that it can evaluate the sufficiency of plaintiff's demands. In other words, there is enough detail for Home Record to assess whether it wants to challenge any of the charges. Of course, plaintiff need not justify its charges with every minute detail. It must merely apprise Home Record of the basis for its claimed amount and it has done so here.

The Court recognizes that plaintiff appears to ask the Court for advisory opinions about the effect of bonding the lien and whether the bond should compel the dismissal of the owner, defendant NYJE, LLC. However, the Court observes that NYJE has not sought affirmative relief to be dismissed from this action. It is axiomatic that "filing of the bond discharges the mechanic's lien, and any judgment that may be issued in plaintiff's favor on its cause of action to foreclose must state that it is to be paid by the surety rather than be issued against the property" (*Doma Inc. v 885 Park Ave. Corp.*, 59 Misc 3d 703, 704-05, 73 NYS3d 401 [Sup Ct, NY County 2018]). Should any party make a motion regarding the issues raised by plaintiff in its opposition,

then the Court will issue the appropriate ruling. But the Court declines to opine on issues not raised in the motion papers.

MS002

In this motion, plaintiff moves for leave to amend to add two causes of action, one for breach of contract and the other for account stated. There is no opposition and so the Court grants it without opposition.

Accordingly, it is hereby ORDERED that defendant Home Record LLC's motion (MS001) for an itemized statement is denied as moot; and it is further


ORDERED that the plaintiff's motion (MS002) for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that plaintiff shall file a copy of the proposed amended complaint, now NYSCEF Doc. No. 30, a separately e-filed document entitled "amended complaint" within 7 days; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto pursuant to the CPLR.

Conference: May 10, 2023 at 11:30 a.m. By May 3, 2023 the parties are directed to upload 1) a discovery stipulation signed by all appearing 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. Based on these submissions the Court will assess whether an in-

person conference is necessary. The failure to upload anything by May 3, 2023 will result in an adjournment of the conference.

1/6/2023		
DATE		ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE