

New York Light Source Corp. v Dooley Elec. Co., Inc.

2023 NY Slip Op 30566(U)

February 27, 2023

Supreme Court, New York County

Docket Number: Index No. 150683/2023

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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NEW YORK LIGHT SOURCE CORP.,

Petitioner,

- v -

DOOLEY ELECTRIC COMPANY, INC., ANTHONY
SODONO

Respondents.

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INDEX NO. 150683/2023

MOTION DATE 2/16/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

WHEREAS petitioner New York Light Source Corp. (“NYLS”) supplied respondent Dooley Electric Company, Inc. (“Dooley NY”), with lighting fixtures and controls in connection with five construction projects in New York County, for which Dooley NY, as the electrical subcontractor, agreed to pay NYLS (the “Projects”); and

WHEREAS, for each of the five Projects, NYLS asserts that accounts receivable and funds (“AR and Funds”) received by Dooley NY are trust assets under the N.Y. Lien Law §70[7] with respect to which Dooley NY is the trustee and a fiduciary and NYLS is a beneficiary; and

WHEREAS, Anthony Sodono, III, purported¹ Assignee for the benefit of creditors for Dooley NY (“Sodono/Assignee”) does not concede that the AR and Funds are trust assets under N.Y. Lien Law and reserves his rights regarding the AR and Funds; and

¹ Mr. Sodono disagrees with the assertion that he is the “purported” Assignee.

WHEREAS, for each of the five Projects, NYLS served Dooley NY with a written request for a Verified Statement pursuant to N.Y. Lien Law § 76[1](b) and [2] (the “Section 76 Demands”); and

WHEREAS Dooley NY did not respond to the Section 76 Demands; and

WHEREAS Dooley NY transferred its accounts, books and records, accounts receivable, funds and other assets it held to Sodono/Assignee; and

WHEREAS NYLS commenced this proceeding pursuant to N.Y. Lien Law §76[5] for an Order directing Dooley NY and Sodono/Assignee to comply with the Section 76 Demands; and

WHEREAS Dooley NY defaulted by failing to answer the petition or otherwise appear in this proceeding; and

WHEREAS Sodono/Assignee submitted an affirmation in opposition to the petition; and

WHEREAS the Court heard oral argument on February 16, 2023, during which NYLS and Sodono/Assignee each had an opportunity to be heard.

NOW, THEREFORE, on consent of the appearing parties it is hereby

ORDERED that within 10 days after the date of this Order, Sodono must provide to counsel for NYLS Verified Statements² containing the information required by N.Y. Lien Law §75[3] for two of the Projects: (a) 550 First Avenue-Lendlease; and (b) 33 Maiden Lane-Turner Construction; and it is further

ORDERED that within 20 days after the date of this Order, Sodono must provide to counsel for NYLS Verified Statements containing the information required by N.Y. Lien Law

² Such Verified Statements shall be based upon the books and records, account statements and other documents Dooley NY provided to Sodono/Assignee, information Sodono/Assignee has received from his accountants and statements made by Robert Hemsing, principal of the purported Assignor.

§75[3] for the remaining three Projects: (a) 413 East 69th Street-Skanska; (b) 240 East 38th Street-Caldwell & Walsh; and (c) 525 East 68th Street-Hunter Roberts; and it is further

ORDERED that the Verified Statements shall include the following:

- Summary of expenses for the individual projects based on the billing report;
- The billing report summarizes expenses by type as follows: material, labor, job expense, and/or labor burden;
- The material amounts will include what has been purchased for the project;
- Cash receipts maintained in Dooley's accounting system;
- Requisitions (Application and Certificate for Payment);
- Requisition forms include amount of original contract, change orders, contract to date, total completed and stored to date, retainage, previous payment certificates, current payment and balance to finish including retainage; and
- Summary of total cost of project and total amount of funds received for the project; and

it is further

ORDERED that the Verified Statements Sodono/Assignee provides to counsel for NYLS pursuant to this Order must be prepared and certified by Sodono/Assignee's accounting team (Eisner Amper LLP) from information contained in Dooley NY's accounts and books and records, and from accounts, books and records maintained by Sodono/Assignee after reviewing Dooley NY's accounts, books and records, accounts receivable, funds and other assets. An affidavit from Eisner Amper must be attached to each Verified Statement; and it is further


STIPULATED that Sodono and Eisner Amper represent that (a) they do not have personal knowledge of any transaction involving Dooley NY prior to the date on which Dooley NY transferred its accounts, books and records, accounts receivable, funds and other assets to Sodono / Assignee and (b) the verifications of the Verified Statements that are provided to counsel for NYLS pursuant to this Order are based upon the Eisner Amper's affidavit; and it is further

ORDERED that for each of the projects referenced in Paragraphs 1 and 2 hereof, Eisner Amper will provide counsel for NYLS with amounts owed to NYLS by project and provide

counsel with copies of (i) Dooley’s requisitions, and (ii) documents showing monies paid to Dooley; and it is further

ORDERED and ADJUDGED that Dooley NY has defaulted in this proceeding by failing to appear and answer or respond to the petition; and it is further

ORDERED and ADJUDGED that the terms of this Order, to which NYLS and Sodono have consented, do not limit any of the claims, rights, or remedies that NYLS may have with respect to Dooley NY.


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2/27/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE