

**Yeshiva Tiferes Shmiel LLC v Weiss Advisory Servs.
Ltd.**

2023 NY Slip Op 30744(U)

March 8, 2023

Supreme Court, Kings County

Docket Number: Index No. 508749/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 508749/2022
Motion Date: 1-9-23
Mot. Seq. No.: 3, 4

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YESHIVA TIFERES SHMIEL LLC,

Plaintiff,

-against-

DECISION/ORDER

WEISS ADVISORY SERVICES LTD.,

Defendant.
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Upon the following papers, listed on NYSCEF as document numbers 37-78 were read on these motions:

In this action, *inter alia*, for the discharge of a mechanic’s lien, in Motion Sequence # 3, Yeshiva Tiferes Shmiel LLC (“YTSL”), moved for order granting YTSL partial summary judgment, pursuant to Lien Law §§ 39 and 39-a, dismissing the mechanic’s lien and awarding YTSL damages, including legal fees, in an amount to be computed at trial, and granting such other relief as this Court deems just. In Motion Sequence # 4, YTSL moved for an order imposing sanctions and costs, including attorney’s fees, on the defendant, as well as on its counsel, pursuant to NYCRR 130-1.1, for deliberately making false statements to the Court, with the improper purpose of seeking to delay or prolong the resolution of the litigation, and granting such other relief as this Court deems just and proper.

Background:

YTSL, who is now the plaintiff in this action, initially commenced a special proceeding seeking various relief, including the discharge a mechanics lien. The Court previously issued an order holding that since YTSL is not claiming that the lien was facially invalid, it could not seek summary discharge of the lien and that for the Court to order the lien discharged, YTSL would have to proceed by plenary action. The court issued an order converting YTSL’s petition to a complaint and defendant’s answer to the petition, its answer to the complaint. In the original petition, which is now deemed YTSL complaint, in addition to seeking discharge of the lien, YTSL also sought the following relief:

- (C) On the third cause of action, for Slander to Title, for compensatory damages, in an amount to be determined at trial,

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plus punitive damages and interest, at the highest rate permissible by law;

(D) On the fourth cause of action, for Injurious Falsehood, for compensatory damages, in an amount to be determined at trial, plus punitive damages and interest, at the highest rate permissible by law;

(E) On the fifth cause of action, for Abuse of Process, for compensatory damages, in an amount to be determined at trial, plus punitive damages and interest, at the highest rate permissible by law;

(F) On all causes of action, prejudgment interest, post judgment interest, attorneys' fees, costs, and such other and further relief as this Court deems just.

When motion sequence # 3 and # 4 appeared on this Court's oral argument calendar on January 9, 2023, the Court issued a short form order granting that branch on Motion Sequence # 3 which was for summary judgment discharging the lien. The Court reserved decision on the remaining branches of the two motions. The only cause of action alleged in the complaint that has been resolved is the cause of action for the discharge of the lien. Apparently, pre-trial discovery remains outstanding and to date, a Note of Issue has not been filed.

Discussion:

YTSL maintains that it is entitled to compensatory damages, as well as attorney's fees, on the ground that the defendant willfully exaggerated the lien. Lien Law § 39 provides:

"In 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 wilfully 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" (emphasis added).

Lien Law § 39-a similarly provides:

"Where in any action or proceeding to enforce a mechanic's lien upon a private or public improvement the court shall have declared said lien to be void on account of wilful exaggeration the person filing such notice of lien shall be liable in damages to the owner or

contractor. The damages which said owner or contractor shall be entitled to recover, shall include the amount of any premium for a bond given to obtain the discharge of the lien or the interest on any money deposited for the purpose of discharging the lien, reasonable attorney's fees for services in securing the discharge of the lien, and an amount equal to the difference by which the amount claimed to be due or to become due as stated in the notice of lien exceeded the amount actually due or to become due thereon.

The Legislature intended the remedies set forth in Lien Law § 39-a to be available only “in any action or proceeding to enforce a mechanic's lien” and only if the lien was valid in all other respects and was declared void by reason of willful exaggeration after a trial of the foreclosure action (see *Joe Smith, Inc. v. Otis-Charles Corp.*, 279 A.D. 1, 107 N.Y.S.2d 233, *affd.* 304 N.Y. 684, 107 N.E.2d 598; *Guzman v. Est. of Fluker*, 226 A.D.2d 676, 678, 641 N.Y.S.2d 721, 724). Here, since the defendant did not assert a counterclaim to foreclose or enforce the lien, nor will there be a trial of any foreclosure claim. Accordingly, YSTL is not entitled to any of the remedies set forth in Lien Law § 39-a.

Further, there has been no judicial determination that the lien was wilfully exaggerated. Indeed, the Court granted YSTL motion for summary judgment discharging the lien, not on the ground of wilful exaggeration, but on the ground that the services allegedly provided by the defendant to YSTL did not provide the defendant with a basis to assert the mechanic's lien. In this regard, a party cannot file a mechanic's lien for doing unlicensed work if, as here, a license was required (see *JME Enters. v Kostynick Plumbing & Heating, Inc.*, 273 AD2d 201; *Louis Savarese Gen. Contr. v Mychalczak*, 272 AD2d 300). The Legislature intended the remedies set forth in Lien Law § 39-a to be available only where the lien was valid in all other respects and was declared void by reason of willful exaggeration after a trial of the foreclosure action (*Guzman v. Est. of Fluker*, 226 A.D.2d 676, 678, 641 N.Y.S.2d 721, 724). Therefore, the Court is without authority to declare the lien void on account of willful exaggeration, nor can the Court grant YSTL any of the remedies set forth in Lien Law § 39-a.

Although YSTL established its entitlement to summary judgment on its claim for discharge of the lien, YSTL has not established entitlement to summary judgment on any of the

other causes of action alleged in the complaint. For these reasons, at this time, the plaintiff is not entitled to an award of damages or attorney's fees on those causes of action.

Finally, YTSL's motion to the extent that it seeks sanctions is denied without prejudice, with leave granted to renew following the trial of this action.

Accordingly, it is hereby

ORDERED that the motions are decided as indicated above.

This constitutes the decision and order of the Court.

Dated: March 8, 2023

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
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