

**Mtr. of 125 Broad CHP, LLC v Fine Craftsman
Group, LLC**

2023 NY Slip Op 31549(U)

May 8, 2023

Supreme Court, New York County

Docket Number: Index No. 159925/2022

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

those lots. On that same date, the respondent filed another notice of mechanic's lien, also dated August 31 2022, against block, 5 lots 1001 and 1003, asserting that it was not paid the same \$1,005,717.09 for services and materials identical to those described in the first lien, that it allegedly provided to the petitioner over the same period of time described in the first notice of lien. In addition, the respondent filed a third lien on September 2, 2022, also dated August 31, 2022, against block 5, lots 1004 and 1005, in same face amount for the same services and material over the same period of time.

On September 20, 2022, the petitioner served the respondent with demands for itemized statements pursuant to Lien Law § 38 in connection with each of the three liens. On September 27, 2022, the respondent served a statement upon the petitioner that purported to be an itemized statement of labor and materials that it had provided in connection with the project at the premises. The two-page statement did not particularize any item of labor or materials, instead describing the contract, setting forth the total amount of the contract, and asserting that

"[t]he items of work, labor and services comprising [the respondent] F[ine] C[raftsman] G[roup]'s Lien include the agreed value of work performed by FCG under the Contract and requisitioned by FCG for the months of May, June and July 2022.

"FCG submitted monthly payment applications to 125 Broad (hereinafter individually referred to as the "Application"). Application No. 125-18 covered the period to May 31, 2022. Application No. 125-19 covered the period to June 30, 2022. Application No. 125-20 covered the period to July 31, 2022. Copies of Applications No. 125-18, 125-19 and 125-20 are annexed hereto as Exhibits 2, 3 and 4 respectively.

"With each Application, including those annexed hereto as Exhibits 2, 3 and 4, FCG submitted to 125 Broad, among other things, detailed monthly expense reports or workbooks, expense receipts and subcontractor invoices or requisitions reflecting the agreed labor, material and other costs and charges incurred for the period covered by the Application. All of the detailed records submitted by FCG to 125 Broad in connection with Applications No. 125-18, 125-19 and 125-20 are annexed hereto as Exhibits 5, 6 and 7 respectively.

"The total value and agreed price for the work performed by FCG through July 2022 is the sum of \$8,152,756.65. The amount paid to FCG by 125 Broad to date, and prior to 125 Broad's wrongful termination of the Contract, was the sum of \$7,147,039.56. The remaining balance due FCG for the amounts

requisitioned by FCG for the period through July 2022, and the amount for which the Lien was filed, is the sum of \$1,005,717.09.”

The respondent attached 212 pages of exhibits to the statement, consisting of the applications for payment relevant contracts and subcontracts, subcontractors’ and vendors’ invoices, invoices for vehicular parking fees, worksheets, diagrams, payment slips, and the like.

Lien Law § 38 provides, in relevant part, 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. . . . 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.”

“Itemization is . . . required only when it is necessary ‘to apprise the owner of details of the lienor’s claim’” (*Associated Bldg. Servs, Inc. v Pentecostal Faith Church*, 112 AD3d 1130, 1131 [3d Dept 2013], quoting *F.J.C. Cavo Constr., Inc. v Robinson*, 81 AD2d 1005, 1005 [4th Dept 1981]). “[T]he statement served by the lienor should set forth the description, quantity and costs of various kinds of materials and the details as to the nature of the labor, time spent and hourly or other rate of labor charges” (*Matter of 819 Sixth Ave. Corp. v T & A Assocs.*, 24 AD2d 446, 446 [1st Dept 1965]; see *Matter of DePalo v McNamara*, 139 A2d 646 [2d Dept 1988]; *Matter of Burdick Assocs. Owners Corp. v Karlan Constr. Corp.*, 131 AD2d 672 [2d Dept 1987]). While Lien Law § 38 does not establish “an absolute right to an itemized statement” in all circumstances (*F.J.C. Cavo Constr., Inc. v Robinson*, 81 AD2d at 1005; see *Matter of Solow v Bethlehem Steel Corp.*, 60 AD2d 826, 826 [1st Dept 1978]), it does require an itemized statement where, as here, the claim is based on quantum meruit and there is a dispute as to the work performed or the value of the work performed (see *Matter of Plain Ave. Storage, LLC v BRT Mgt., LLC*, 165 AD3d 1264, 1265-1266 [2d Dept 2018]; *Matter of Burdick Assocs. Owners*

Corp. v Karlan Constr. Corp., 131 AD2d at 672; *Matter of Solow v Bethlehem Steel Corp.*, 60 AD2d at 826; *Matter of 819 Sixth Ave. Corp. v T & A Assocs.*, 24 AD2d at 446).

When an itemized statement is required, “to enable the petitioner to check the claim, the statement served by the lienor should set forth the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of the labor charges” (*Matter of 819 Sixth Ave. Corp. v T & A Assocs.*, 24 AD2d at 446 [citations omitted]; see *Matter of Sperry v Millar*, 254 App Div 819, 819 [4th Dept 1938]; *Matter of 2269 First Ave Owner LLC v BDM Solutions, LLC*, 2019 NY Slip Op 31823[U], * 3, 2019 NY Misc LEXIS 3422, *4 [Sup Ct, N.Y. County, Jun. 24, 2019]; *Matter of Maxwell Partners, LLC v L.G.B. Development, Inc.*, 2006 WL 8085000 [Sup Ct, N.Y. County, Jul. 10, 2006] [Feinman, J.]; *Matter of Seid v Hanco Co.*, 31 Misc 2d 316, 317 [Sup Ct, Onondaga County 1961]). “The burden of producing an adequate statement rests on the lienor” (*Matter of Maxwell Partners, LLC*, 2006 WL 8085000, *3; see *Matter of 819 Sixth Ave. Corp. v T & A Assocs.*, 24 AD2d at 446; *Matter of 2269 First Ave Owner LLC v BDM Solutions, LLC*, 2019 NY Slip Op 31823[U], *4, 2019 NY Misc LEXIS 3422, *5; *Matter of Seid v Hanco Co.*, 31 Misc 2d at 317). “Mere copies of invoices ... [and] [g]eneral summaries or lump sum statements do not meet the requirements of Lien Law § 38” (*Matter of Maxwell Partners, LLC*, 2006 WL 8085000, *3; see *Matter of PDS Second Carroll LLC v Triple C Glass Corp.*, 2021 NY Slip Op 32743[U], *4, 2021 NY Misc LEXIS 6653 *5 [Sup Ct, Kings County, Dec. 21, 2021]; *Matter of 2269 First Ave Owner LLC v BDM Solutions, LLC*, 2019 NY Slip Op 31823[U], *4, 2019 NY Misc LEXIS 3422, *5).

The statement supplied by the respondent here is not sufficiently itemized to permit the petitioner to check the claim, and does not meet the requirements of Lien Law § 38 (see *Matter of 2269 First Ave Owner LLC v BDM Solutions, LLC*, 2019 NY Slip Op 31823[U], *4, 2019 NY Misc LEXIS 3422, *5; *Matter of Plain Ave. Storage, LLC v BRT Mgt., LLC*, 165 AD3d at 1266; *Matter of De Palo v McNamara*, 139 AD2d 646, 647 [2d Dept 1988]; *Matter of Scorpion Fitness*,

Inc. v PCCM Management Corp., 2017 WL 3115035 [Sup Ct, N.Y. County, Jul. 14 2017]; *Matter of Pineda v AB Painting & Constr., Inc.*, 2015 WL 5470165 [Sup Ct, N.Y. County, Sep. 14, 2015]). The 200-plus pages of exhibits that were attached to the respondent's statement are not self-explanatory, do not clarify what items of labor and materials are in dispute or how the lien is supported, and do not seem to correlate to the amounts claimed in the lien. The respondent otherwise does not explain how these materials support its claims or where such support would be found, and neither the petitioner nor the court should be required to "make out a statement" from the voluminous materials (*Matter of 2269 First Ave Owner LLC v BDM Solutions, LLC*, 2019 NY Slip Op 31823[U], *5, 2019 NY Misc LEXIS 3422, *6; see *Matter of Seid v Hanco Co.*, 31 Misc 2d at 317).

Accordingly, it is

ADJUDGED that the petition is granted; and it is,

ORDERED that the respondent shall, within 10 days of service upon it of a copy of this order and judgment with notice of entry, serve upon the petitioner fully and properly itemized statements of labor and materials that support the amounts claimed to be owed by the petitioner to the respondent, as set forth in the three liens dated August 31, 2022; and it is further,

ORDERED that, should the respondent fail timely to serve proper, adequate, and appropriate itemized statements, the three liens shall be vacated, cancelled, and discharged.

This constitutes the Decision, Order, and Judgment of the court.

5/8/2023
DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

☐ DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN


JOHN J. KELLEY, J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐ OTHER

☐ REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: