

CNY Residential LLC v 68-70 Spring Partners, LLC
2023 NY Slip Op 31874(U)
May 31, 2023
Supreme Court, New York County
Docket Number: Index No. 656123/2021
Judge: Melissa A. Crane
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE**PART****60M***Justice*

-----X

CNY RESIDENTIAL LLC,

Plaintiff,

INDEX NO. 656123/2021**MOTION DATE** N/A, N/A**MOTION SEQ. NO.** 002 003

- v -

68-70 SPRING PARTNERS, LLC, UNITED STATES FIRE
INSURANCE COMPANY, INFINITES SAFETY QUALITY &
CONSTRUCTION MANAGEMENT
INC., INFRASTRUCTURE DEVELOPMENT SPECIALISTS,
INC, SC CONSTRUCTION GROUP LLC, ELMHARDT
CONSTRUCTION CORP., JOHN DOE NOS. 1-5, THE
NAME JOHN DOE BEING FICTITIOUS, THE TRUE NAME
OF THE DEFENDANTS BEING UNKNOWN

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 135, 136

were read on this motion to/for

MECHANICS LIEN

The following e-filed documents, listed by NYSCEF document number (Motion 003) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 137

were read on this motion to/for

AMEND CAPTION/PLEADINGS

Upon the foregoing documents, the motions are granted, and the cross motion is denied.

With respect to the first motion (MS 02), defendant Infinite moves to extend its liens and to compel acceptance of its late answer with counterclaims and cross claims. Defendant 68-70 Spring Partners, that did not even sue Infinite in the first place, is the only party to oppose this motion. It has also cross-moved to vacate and discharge Infinite's liens.

CPLR 3012 (d) permits the court, upon an application by a party, to compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay. As no party has moved to default Infinite, or asked for other affirmative relief against Infinite, until this motion, there is no need for Infinite to set forth a meritorious defense (*see Nason v Fisher*, 309 AD2d 526 [1st Dept 2003]). The court notes though that Infinite has set forth a meritorious claim or defense in the affidavit of its President,

Eric Hirani, who describes the work Infinite performed and that plaintiff and Spring were both aware of that work (*see* EDOC 90, ¶¶ 6-8).

Mr. Hirani also testified that, despite the Secretary of State having Infinite's correct address, no one at Infinite received the complaint which would have been immediately forwarded to counsel had it been received (*id.*, ¶¶ 22-25). Plaintiff chose to serve Infinite via the Secretary of State and not provide a courtesy follow up mailing. Even though there was a prior action between CNY and Spring in which Infinite sought to intervene, and even though there were some settlement discussions, neither CNY nor Spring thought to apprise Infinite of this second lawsuit. It was not until Infinite's attorneys were preparing for a second extension of Infinite's lien that they learned of this lawsuit. Thus, on this record, there has been no willful default and there is a reasonable excuse.

It is difficult to understand why Spring has opposed this motion when plaintiff has not, especially as Spring has insisted that Infinite is a necessary party to this case (*see* EDOC 118, ¶ 57). Moreover, Spring had not done anything until its response to this motion to seek to discharge Infinite's liens or otherwise default Infinite. Finally, Spring, who has not sued Infinite and who, according to Hirani, was in conversations with Infinite about the project and about getting paid, did nothing to warn Infinite about this lawsuit during the year and a half it has been pending against Infinite. Under these circumstances, Spring's opposition and cross motion are a thinly veiled attempt to discharge Infinite's lien rights without having to deal with the merits. Any prejudice to Spring is negligible and due to its own inaction.

Accordingly, in light of the strong public policy of this State to dispose of cases on their merits (*Cornwall Warehousing, Inc. v Lerner*, 171 AD3d 540, 541 [1st Dept 2019]), the court grants the motion to extend its lien and to compel acceptance of its late answer with counterclaims and cross claims (*see Mejia v De La Rosa*, 210 AD3d 506, 506, [1st Dept 2022] [reversing this court where default was neither willful nor part of a pattern of dilatory behavior, and plaintiff has not demonstrated prejudice]).

In motion 3, Infinite seeks to serve an amended pleading naming Atlantic Specialty Insurance Company as a necessary party, and to assert cross claims against it. Despite conceding that Atlantic is a necessary party, Spring opposes this motion as well. Spring makes the same arguments that this court already rejected in motion 2. It then argues that it should not have had to contend with two motions when one would have sufficed, despite being the party who

interposed an unnecessary cross motion on motion 2. There has been enough unnecessary motion practice on both sides. This is certainly not a reason to preclude the addition of a necessary party.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly it is,

ORDERED THAT motion 2 is granted, the court compels (pursuant to CPLR 3012 [d]) the acceptance of Infinite's Answer with Counterclaims and Cross claims nunc pro tunc to 30 days after the commencement of this action, and INFINITE SAFETY QUALITY & CONSTRUCTION MANAGEMENT, INC. is permitted to intervene in this action as a party defendant; and it is further

ORDERED THAT the mechanic's lien filed by Infinite Safety, Quality, & Construction Management, Inc., on April 29, 2021, and extended on March 30, 2022, against 68-70 Spring Partners, LLC, shall be extended for a period of one year from the granting of this order pursuant to the provisions of Lien Law § 17; and it is further

ORDERED THAT pursuant to § 17 of the Lien Law of the State of New York, the mechanic's lien filed by Infinite Safety, Quality, & Construction Management, Inc., on July 1, 2021, and extended on June 17, 2022, against 68-70 Spring Partners, LLC, be extended for a period of one year from the granting of this order pursuant to the provisions of Lien Law § 17; and it is further

ORDERED THAT the cross motion is denied; and it is further

ORDERED THAT there shall be no further motion practice without prior conference with the judge; and it is further

ORDERED THAT motion 3 for leave to file and serve a supplemental summons and amended pleading naming Atlantic Specialty Insurance Company as an additional and necessary defendant is granted, and intervenor shall file and serve the summons and answer with counterclaims/crossclaims (EDOC 128), pursuant to the CPLR, within 5 days of the date of this decision and order; and it is further

ORDERED THAT the caption be amended to reflect the amendment, and that all future papers filed with the Court shall bear the following amended caption:

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

-----X
CNY RESIDENTIAL LLC,
Plaintiff,

- against -

Index No. 656123/2021

68-70 SPRING PARTNERS, LLC, UNITED STATES
FIRE INSURANCE COMPANY, INFINITE SAFETY
QUALITY & CONSTRUCTION MANAGEMENT, INC.,
INFRASTRUCTURE DEVELOPMENT SPECIALISTS,
INC., SC CONSTRUCTION GROUP LLC, ELMHARDT
CONSTRUCTION CORP., ATLANTIC SPECIALTY
INSURANCE COMPANY, and John and John Doe Nos. 1-
5, the name John Doe being fictitious, true names of the
defendants being unknown,
Defendants

-----X
And it is further

ORDERED THAT within 5 days of the court's entry of this order, counsel for Infinite shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the Court's records to reflect the change in the caption herein; and it is further

ORDERED THAT service upon the County Clerk and Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-filing" page on the court's website – www.nycourts.gov/supctmanh); and it is further

ORDERED THAT the parties must appear for a status conference over Microsoft Teams on 6/30/23 at 11:30 a.m.

5/31/2023

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐
☐
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

☒
☒
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE


MELISSA A. CRANE, J.S.C.