

**Matter of Garrett Realty Corp. v RGL Kingsland
Servs. Inc.**

2023 NY Slip Op 32859(U)

August 17, 2023

Supreme Court, New York County

Docket Number: Index No. 155284/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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In the Matter of
GARRETT REALTY CORP.

Petitioner,

- v -

RGL KINGSLAND SERVICES INC.,

Respondent.
-----X

INDEX NO. 155284/2023

MOTION DATE 07/12/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9

were read on this motion to/for MISC. SPECIAL PROCEEDINGS/LIEN LAW § 38 .

This is a proceeding pursuant to Lien Law § 38, in which the petitioner seeks to compel the respondent to provide it with an itemized statement of labor and materials with respect to a mechanic's lien that the respondent filed on or about May 1, 2023 in the face amount of \$959,000 against premises identified as 523-525 West 125th Street, New York, New York (the premises). The respondent does not oppose the petition. The petition is granted, and the respondent shall provide the petitioner with the appropriate itemized statement within 10 days of service upon the respondent of this order and judgment with notice of entry.

On May 1, 2023, the respondent filed a notice of mechanic's lien against real property designated as Block 1982, Lots 14 and 15, on the tax maps of the City of New York, Borough of Manhattan, asserting that it was not paid the sum of \$959,000 for supplying labor and materials to the petitioner in connection with work at the premises.

On May 18, 2023, the petitioner served the respondent with a demand for an itemized statement pursuant to Lien Law § 38 in connection with the lien. The respondent has yet to provide the necessary itemized statement. According to the petitioner, it did not order or

request the respondent to provide any of the disputed labor or materials, which instead were requested by the petitioner's licensee and contract purchaser, and that all such work nonetheless was performed by the respondent without obtaining any permits for demolition, construction, or asbestos removal.

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).

Accordingly, it is

ADJUDGED that the petition is granted; and it is

ORDERED that, no later than 10 days after the entry of this order and judgment, the petitioner shall serve a copy of this order and judgment with notice of entry upon the respondent by overnight delivery; and it is further,

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 a fully and properly itemized statement of labor and materials that supports the amounts claimed to be owed by the petitioner to the respondent, as set forth in the lien dated May 1, 2023; and it is further,

ORDERED that, should the respondent fail timely to serve a proper, adequate, and appropriate itemized statement in accordance with this order and judgment, the lien shall be vacated, cancelled, and discharged.

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

8/17/2023

DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE