

**Matter of Global 1845 Broadway, LLC v Constrafor,
Inc.**

2023 NY Slip Op 33887(U)

October 31, 2023

Supreme Court, New York County

Docket Number: Index No. 155329/2023

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****IAS MOTION 56EFM***Justice*

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In the Matter of

GLOBAL 1845 BROADWAY, LLC,

Petitioner,

- V -

CONSTRAFOR, INC.,

Respondent.

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The following e-filed documents, listed by NYSCEF document number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 (Motion 001)

were read on this motion to/for

DISCHARGE MECHANIC'S LIEN

In this proceeding pursuant to Lien Law § 19(6), the petitioner seeks to vacate and discharge a lien in the face amount of \$2,882,293.98 that the respondent had filed with the Office of the City Register of the New York City Department of Finance (NYC DOF) against real property located at 1841 Broadway, New York, New York, and designated as Block 1113, Lot 18, on the tax map of the Borough of Manhattan, City of New York. The respondent does not oppose the petition. The petition is granted, the lien is vacated and discharged, and the Office of the City Register of the NYC DOF is directed to update its records accordingly.

On August 1, 2019, the petitioner, as owner/developer, entered into a construction management agreement with Pavarini McGovern, LLC (PM), pursuant to which PM agreed to serve as construction manager of a new 27-story residential building to be erected at 1841 Broadway, New York, New York (the building). On August 20, 2020, PM entered into a trade subcontract with StructureTech, Inc. (StructureTech), pursuant to which the latter agreed to construct the superstructure and foundation of the building, among other things. On or about April 26, 2022, StructureTech entered into a subcontractor receivables purchase agreement

with the respondent financing company Constrafor, Inc. (Constrafor). Pursuant to that agreement, StructureTech sold and assigned, to Constrafor, its rights to payments due under StructureTech's trade subcontract with PM, in exchange for a cash payment from Constrafor. On August 2, 2022, PM terminated the StructureTech trade subcontract due to, among other reasons, StructureTech's financial insolvency. On April 10, 2023, Constrafor, as StructureTech's putative "payment assignee and agent," filed, with the City Register, a lien on the building in the face amount of \$2,882,293.98 that was verified by Constrafor's president. Constrafor identified the lien as a "Lien for Common Charges," served the lien on various interested parties, and filed proof of that service with the City Register.

The petitioner seeks to vacate and discharge the lien as invalid, inasmuch as (a) Constrafor improperly filed the lien as a "Lien for Common Charges," which cannot create a mechanic's lien in favor of a contractor or its assignee, (b) Constrafor improperly filed the lien with the City Register, rather than the New York County Clerk, and (c) Constrafor is not a contractor or materialman that may file a mechanic's lien, but is instead a finance company claiming to be a third-party assignee of a contractor's rights, and thus lacks standing or authority to file a mechanic's lien under the Lien Law.

Lien Law § 19(6) provides, in relevant part, that

"[w]here it appears from the face of the notice of lien that the claimant has no valid lien by reason of the character of the labor or materials furnished and for which a lien is claimed, or where for any other reason the notice of lien is invalid by reason of failure to comply with the provisions of section nine of this article, or where it appears from the public records that such notice has not been filed in accordance with the provisions of section ten of this article, the owner or any other party in interest, may apply to the supreme court of this state, or to any justice thereof, or to the county judge of the county in which the notice of lien is filed, for an order summarily discharging of record the alleged lien."

The subject lien is facially defective because it purports to be lien for common charges, even though Constrafor is actually seeking to recover StructureTech's receivables, and Lien Law §§ 2(4) and 3 only permit the filing a mechanic's lien for unpaid material and labor that had been provided to the owner for the improvement of real property (see *Robert Plan Corp. v*

Greiner-Maltz Co., 229 AD2d 122, 123-124 [2d Dept 1997]). A lien for common charges is a different form of lien, pertaining to condominiums, that is created by Real Property Law §339-z and §339-aa. Although Constrafor characterized its lien as one for common charges, there is no evidence that it ever obtained, or is claiming that it obtained, any interest in the common charges of a condominium.

Moreover, Lien Law §10(1) requires that a mechanic's lien must be filed with the appropriate County Clerk. Constrafor's filing of its lien with the City Register was improper, and does not create a proper mechanic's lien.

Furthermore,

"It is well settled that a successor in interest, for purposes of the application of subdivision 1 of section 2 of the Lien Law, may only be 'one who succeeds to a lienor's rights under a valid notice of lien *already filed*, by assignment or otherwise * * * [The] assignor must have an existing lien before he can have a "successor in interest"' (*Tisdale Lbr. Co. v Read Realty Co.*, 154 App Div 270, 271).

"This rule *excludes from the definition of lienor those who are assignees of claims for money arising solely out of the performance of labor and/or the furnishing of materials by others for the simple reason that a mechanic's lien is a remedy, the right to which is personal to the laborer, predicated upon his labor* (*Rollin v Cross*, 45 NY 766). Since the right is a personal one, it is only the laborer or materialman who may obtain the provisional remedy of a mechanic's lien"

(*Dember Constr. Corp. v P & R Electric Corp.*, 76 AD2d 540, 543 [2d Dept 1980] [emphasis added]; see *Hall v Carl G. Ek & Son Constr. Co.*, 17 AD2d 558, 559-560 [4th Dept 1963]; *EklecCo v Iron Workers Locals 40, 361, & 417 Union Sec. Funds*, 170 F3d 353, 358 [2d Cir 1999]). StructureTech, the entity which provided the subject material and labor to the petitioner, never filed a mechanic's lien and, hence, Constrafor cannot be deemed to be its successor-in-interest within the meaning of the Lien Law. Further, Constrafor, which filed the lien in its capacity as StructureTech's assignee, has no authority or standing to file a mechanic's lien.

In light of the foregoing, the petition must thus be granted, and the lien that was filed by Constrafor must be vacated and discharged.

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted, without opposition, and the “lien for common charges” in the face amount of \$2,882,293.98, which had been filed and recorded by the respondent, Constrafor, Inc., on April 10, 2023, with the Office of the City Register of the New York City Department of Finance, under Document ID 2023040700792003, against real property located at 1841 Broadway, New York, New York, and designated as Block 1113, Lot 18, on the tax map of the Borough of Manhattan, City of New York, be, and hereby is, vacated, discharged, and of no further force and effect; and it is further,

ORDERED that, upon service of copy of this order and judgment with notice of entry upon the New York City Corporation Counsel and the Office of the City Register of the New York City Department of Finance, the Office of the City Register shall forthwith amend and update its records accordingly so as to vacate and discharge the lien for common charges.

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

10/31/2023
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE