

**Matter of Your Vet 1, LLC
v Eastman, Cooke & Assoc., LLC**

2023 NY Slip Op 34397(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 157680/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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INDEX NO. 157680/2023

In the matter of the Application of

MOTION DATE 11/02/2023

YOUR VET 1, LLC,

MOTION SEQ. NO. 001

Petitioner,

- v -

**DECISION + ORDER ON
MOTION**

EASTMAN, COOKE & ASSOCIATES, LLC,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for MECHANICS LIEN.

Upon the foregoing documents, the court grants in part Petitioner Your Vet 1, LLC’s (“Petitioner”) Verified Petition to the extent that the court vacates and discharges Respondent Eastman, Cooke & Associates, LLC’s (“Respondent”) mechanic’s lien without prejudice.

Petitioner brought this Verified Petition against Respondent seeking an order vacating and canceling Respondent’s mechanic’s lien against the real property located at 541 Columbus Avenue, New York, New York (“Property”) with prejudice. Although not set forth in Petitioner’s Notice of Petition, Petitioner also seeks an order finding that Respondent willfully exaggerated the lien and that Petitioner is entitled to treble damages.

Respondent filed a mechanic’s lien, dated June 14, 2023, on the Property in the amount of \$61,456.64. The mechanic’s lien indicates that Respondent was employed by Petitioner, that Respondent furnished to or is to furnish materials, consisting of “a lead lined X-ray door and light fixtures” for Petitioner and that Respondent has a contract with Petitioner. The mechanic’s lien further indicated that the date when the first item or work was performed and the first item

of material was furnished was September 8, 2022, and the date when the last item of work was performed and the last item of material was furnished was December 6, 2022. Finally, it indicates that “said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.”

On July 14, 2023, Petitioner served Respondent with a Demand for Itemized Statement (“Demand”) pursuant to Lien Law § 38. Respondent failed to provide a response to the Demand prior to the filing of the Verified Petition, but provided one, dated August 21, 2023, prior to the filing of its Answer and opposition papers.

Petitioner argues in substance that Respondent’s Itemized Statement is deficient as a matter of law in that it failed to comply with Lien Law § 38 and that Respondent willfully exaggerated the lien. Petitioner argues in substance that the parties never entered into a written contract or agreement regarding the amounts claimed in the lien.

Respondent alleges in substance that since it provided its Itemized Statement in response to Petitioner’s Demand, the Petition is now moot. Respondent further argues that the Itemized Statement complies with Lien Law § 38 because it includes a breakdown of the materials, which were lead items purchased by Respondent for Petitioner, and the general conditions incurred by Respondent for the project on the Property. It further argues in substance that the Petition is premature since Petitioner failed to seek a court order compelling Respondent to provide an Itemized Statement. Respondent also argues that a mechanic’s lien cannot be cancelled and discharged for willful exaggeration until there is an action filed to foreclose on the lien.

In Reply, Petitioner argues that the mechanic’s lien is deficient as a matter of law in that it failed to comply with Lien Law § 38, that the lien is defective on its face, and that Respondent willfully exaggerated the lien. Petitioner further argues that Respondent failed to produce any

written agreement or contract indicating that Petitioner agreed to, consented to, or approved payment for, any of the material Respondent alleges that it purchased on Petitioner's behalf. Petitioner further argues that neither Respondent, nor anyone else, performed any work on the Property on Petitioner's behalf, that Petitioner was not a tenant on the property, that it did not operate a business on the property, that Respondent did not deliver any material to the Property, and that Respondent never stepped foot on the Property.

Petitioner also argues that Respondent's response to Petitioner's Demand is insufficient as it failed to substantiate the lien amount and demonstrated that the lien is defective on its face because of its dates which contradict the dates on the supporting documents.

Pursuant to Lien Law § 38, once a demand for an itemized statement is made, an itemized statement involving material must set forth the items of material, the value of the material which make up the amount of the lien and the terms of the contract under which such items were furnished (Lien Law § 38). The itemized statement should be detailed enough for the petition to check the claim and it must set forth "the description, quantity and costs of various kinds of materials" (*819 Sixth Ave. Corp. v T. & A. Assocs.*, 24 AD2d 446, 446 [1st Dept 1965]; *DePalo v McNamara*, 139 AD2d 646, 647 [2d Dept 1988] [the court canceled the lien because the response to the Demand for an itemized statement failed to set forth the terms of the parties' purported oral contract, the items and cost of labor, or the items and cost of materials]).

Here, the court grants the portion of the Petition seeking an order vacating the mechanic's lien, but the court does so without prejudice. The court denies the portion of the Petition seeking an order vacating the mechanic's lien with prejudice and an order determining that Respondent willfully exaggerated the lien so that Petitioner is entitled to treble damages. The court also

declines to order Respondent to provide a supplemental Response to Petitioner's Demand for an Itemized Statement prior to vacating the lien.

The court agrees with Petitioner and finds that Respondent's mechanic's lien is defective on its face as it incorrectly stated that labor was performed and material provided to Petitioner between September 8, 2022, and December 6, 2022. However, in its affirmation in opposition to the Petition, Respondent admitted that no labor was provided by Respondent at the project. Additionally, the dates on the lien and the dates in the supporting documents conflict with each other.

Additionally, the court finds that Respondent's Itemized Statement failed to comply with the requirements of Lien Law § 38 in that it failed to include the terms of a contract or agreement supporting its claims that Petitioner consented to, approved, or authorized Respondent to purchase the material included in the lien. There is no evidence that Petitioner approved the purchase orders. Additionally, Respondent's Itemized Statement failed to include a sufficient breakdown of the items purchased and the amount of each item, instead of insufficient lump sum amounts, it failed to demonstrate that Respondent paid for such items on Petitioner's behalf, or that the material was ever ordered or provided to Respondent.

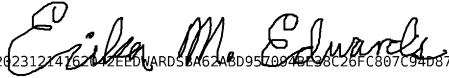
Although the court vacates the mechanic's lien, the court finds that Petitioner failed to demonstrate that Respondent willfully exaggerated the amount of the lien based upon the documents and the court agrees that such determination would be premature at this time.

The court has considered all additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court grants in part Petitioner Your Vet 1, LLC's Verified Petition to the extent that the court vacates and discharges Respondent Eastman, Cooke & Associates, LLC's mechanic's lien, dated June 14, 2023, in the amount of \$61,456.64, without prejudice, and the court denies the remainder of the Verified Petition.

This constitutes the decision and order of the court.


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<u>12/14/2023</u> DATE					<u>ERIKA M. EDWARDS, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER			
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>		REFERENCE