

**Matter of PCCM Supply, Inc. v Sanmar Bldg. Servs.
LLC**

2024 NY Slip Op 32597(U)

July 29, 2024

Supreme Court, New York County

Docket Number: Index No. 154079/2023

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY
Justice

PART 16TR

In the Matter of the Application of

PCCM SUPPLY, INC.,

Petitioner,

For an Order Pursuant to the Lien Law Discharging a
Certain Notice Under Mechanic’s Lien Law for Account
of Private Improvement as Being Improperly Filed,

-against-

SANMAR BUILDING SERVICES LLC,

Respondent.

INDEX NO. 154079/2023

MOTION DATE 10/13/2023

MOTION SEQ. NO. 001

DECISION & ORDER

The following e-filed documents, listed by NYSCEF document number, were read on this motion (Seq. No. 1) to/for **DISCHARGE MECHANIC’S LIEN**: 1-6, 10, 13-14, 17, 20

In this proceeding, petitioner PCCM SUPPLY, INC. (“Petitioner”) seeks summary discharge, pursuant to Lien Law § 19(6), of the mechanic’s lien filed by respondent SANMAR BUILDING SERVICES LLC (“Respondent”). Petitioner initiated this proceeding by Verified Petition and Order to Show Cause filed on May 5, 2023. The Court signed the Order to Show Cause on May 15, 2023, setting a return date of June 22, 2023. On February 21, 2024, Respondent filed an Answer and opposition to the motion. On July 20, 2023, the parties appeared before the Court via Microsoft Teams for oral argument. During that appearance, the Court granted Petitioner leave to file a reply and Respondent leave to file a surreply. Petitioner filed its reply on September 11, 2023, and Respondent filed its surreply on October 13, 2023. For the reasons discussed below, Petitioner’s motion is denied.

Petitioner is a construction-management company that was engaged to perform alteration work at the premises located at 730 Fifth Avenue, New York, New York (the “Premises”). The Premises are a condominium, with the lower floors consisting of a hotel and the upper floors

consisting of residential units. The hotel condominium is designated in the New York County Tax Map as Block 1272, Lot 1202, while the residential condominiums are designated as Block 1272, Lots 1203-1225.

Petitioner performed construction work in both the hotel and residential units. To clean those areas after it had completed its work, it hired Respondent. There is no dispute that Respondent in fact completed the work it was hired to perform.

On April 5, 2023, Respondent filed a Notice of Mechanic's Lien (the "Lien") against the Premises, naming 730 Fifth Upper LLC as owner and Petitioner as contractor. (Dkt. No. 5) Notably, the Lien specifically identifies the Premises by its address as well as by Block 1272 and Lot 1202—*i.e.*, the block and lot designation of the hotel condominium. (*Id.*) According to the Lien, \$71,545 is due and owing to Respondent for "Post Construction Cleaning Services" last performed on October 15, 2022. (*Id.*)

In its Verified Petition, Petitioner attacks the Lien based on alleged procedural deficiencies. Specifically, Petitioner contends that the Lien was filed untimely, as against both the residential units and the hotel, based on the last dates of work set forth in the Lien itself and in Respondent's billing records, both of which Petitioner submits in support of the motion. With respect to the Lien, Petitioner argues that the listed last date of work, October 15, 2022, is more than four months before the Lien filing date of April 5, 2023, rendering it untimely filed as to the residential units pursuant to Lien Law § 10 as it applies to single-family dwellings. And, with respect to Respondent's billing records, Petitioner argues that the last date of work reflected in those records, April 5, 2022, is one day more than eight months before the Lien filing date, also rendering it untimely filed as to the hotel under the generally applicable clause of Lien Law § 10. Next, Petitioner contends that Respondent cannot place a "blanket lien" on all of the units, hotel and residential, because it performed work in all of them and thus must separately lien each one for the work performed specifically in each. Finally, Petitioner contends that the amount allegedly due and owing under the Lien appears to be improper because Respondent's timecards appear not to have been completed by the individual employees but by one person.

At bottom, Respondent's argument in opposition to the motion is that Petitioner's contentions are either improperly made on this petition seeking summary discharge of the Lien or otherwise ignore the face of the Lien. According to Respondent, under *Rivera v. Department of Housing*

Preservation & Development of the City of New York, 29 N.Y.3d 45 (2017), a court's only concern on a petition for summary discharge of a mechanic's lien under Lien Law § 19(6) is whether the notice of lien is facially valid. Thus, Respondent argues, Petitioner's attempt to rely on evidence extrinsic to the Lien, namely, Respondent's billing records, is improper in this proceeding and must be reserved for a foreclosure trial.

During oral argument on July 20, 2023, the Court requested that Petitioner file a reply brief providing caselaw support for its contention that a court may consider extrinsic evidence in determining the petition, contrary to *Rivera's* holding. The Court also granted Respondent leave to then file a surreply.

In its reply, which it labeled "Supplemental Briefing," Petitioner did not provide the requested caselaw but instead raised an entirely new argument—*i.e.*, one that was not raised in the Verified Petition—as to why the Lien was facially invalid. Petitioner now argues that the Lien is facially invalid because the claimed services of "Post Construction Cleaning Services" are non-lienable under Lien Law §§ 2(4) and 3.

Respondent duly filed its surreply expressly raising the fact that Petitioner's reply failed to provide any caselaw contradicting *Rivera's* holding and that it instead made a new substantive argument. Nevertheless, Respondent also addressed Petitioner's new argument, contending that it fails under Lien Law §§ 2(4) and 3 because, in sum and substance, removing demolition debris—the alleged actual nature of Respondent's work—is "demolition" within the meaning of the statute.

Rivera is controlling law. There, the New York Court of Appeals outlines the two ways in which a property owner may seek to discharge a mechanic's lien as well as the applicable standards:

The Lien Law provides two methods by which a property owner may discharge a mechanic's lien. A property owner may obtain summary discharge of a lien when "it appears from the face of the notice of lien" that the lien is invalid because "the labor or materials furnished" are not lienable or where the notice of lien does not include the information required by Lien Law § 9 or has not been properly filed. Alternatively, where the validity of the underlying lien is at issue but the notice of lien is facially valid, an owner can force trial, with the goal of vacating the lien, by serving notice on the lienor demanding commencement of an action to enforce the lien within 30 days. Failure of the lienor to do so results in a court order vacating the lien.

... Summary discharge addresses *only the facial validity of the notice of lien* and leaves disputes regarding the claimed expenses in the underlying liens to be resolved at a foreclosure hearing or trial. ...

Rivera, 29 N.Y.3d at 51 (emphasis added) (quoting Lien Law § 19(6)).

Petitioner's contentions in the Verified Petition fail under *Rivera* and Lien Law § 19(6). The face of Lien indicates that it was filed against the hotel unit (Block 1272, Lot 1202) only. Therefore, the four-month deadline for filing a mechanic's lien applicable to single-family dwellings is inapplicable to the Lien. Further, Petitioner concedes that the Lien is timely filed with regard to the hotel unit based on the last date of work stated on the face of the Lien. Under *Rivera*, the Court may not consider Respondent's billing records and the earlier last date of work stated therein to summarily discharge the Lien. Moreover, an argument similar to Petitioner's argument concerning the propriety of the claimed amount due under the Lien was rejected in *Rivera*, where the Court of Appeals held that "[s]uch a dispute is not properly resolved through a summary discharge proceeding." 29 N.Y. at 53. Finally, Petitioner fails to provide any caselaw support whatsoever for its contention that Respondent must file separate liens against each of the units for the amount of work apportionable to each, and, in any event, resolution of that argument would require the Court to impermissibly look beyond the face of the Lien to determine facts in extrinsic evidence.

As to Petitioner's argument concerning the nonlienable nature of Respondent's work, the Court declines to consider that argument in deciding the motion. By raising that argument for the first time in its reply brief, Petitioner waived it. *Ctr. for Indep. of Disabled v. Metro. Transp. Auth.*, 184 A.D.3d 197, 209 (1st Dep't 2020). The Court's request for additional briefing concerning *Rivera* and its relevance to the arguments made in the Verified Petition was not carte blanche for Petitioner to functionally ignore the request and raise entirely new arguments about the Lien's facial invalidity.

Accordingly, it is hereby:

ORDERED and ADJUDGED that the petition and pending motion (Seq. No. 1) are **DENIED**, and the proceeding is **DISMISSED**; and it is further

ORDERED that the Clerk shall mark Motion Sequence 1 decided in all court records; and it is further

ORDERED that the Clerk shall mark this proceeding disposed in all court records.

This constitutes the decision and order of the Court.



July 29, 2024

DATE

SHAHABUDDOEN ABIDALLY, A.J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

APPLICATION:

GRANTED

DENIED

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

SETTLE ORDER

SUBMIT ORDER

STAY CASE

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE