

Natixis, N.Y. Branch v 20 TSQ Lessee LLC

2024 NY Slip Op 32853(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 850272/2019

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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NATIXIS, NEW YORK BRANCH, CATHAY LIFE
INSURANCE CO., LTD., NONGHYUP BANK,
NONGHYUP BANK NEW YORK BRANCH, NONGHYUP
BANK, NONGHYUP BANK, KEB HANA BANK NEW
YORK AGENCY, HAREL - 20 TIMES SQUARE -
GENERAL PARTNERSHIP, CHANG HWA COMMERCIAL
BANK, LTD., LOS ANGELES BRANCH, CHINA
MERCHANTS BANK CO., LTD., NEW YORK BRANCH,
VIOLET PROTECTED ASSET SPC,

INDEX NO. 850272/2019

MOTION DATE 03/28/2024,
04/16/2024,
06/18/2024

MOTION SEQ. NO. 027 028 029

Plaintiffs,

**DECISION + ORDER ON
MOTION**

- v -

20 TSQ LESSEE LLC, 20 TSQ SIGN LLC, MARK SIFFEN,
NAVILLUS TILE, INC., FACADE TECHNOLOGY,
LLC, SERVICE GLASS & STORE FRONT CO.,
INC., SIGNATURE METAL & MARBLE MAINTENANCE,
L.L.C., HARDER SERVICES, INC., METAL SALES CO.,
INC., FACADE MAINTENANCE SYSTEMS LLC, TEXAS
SCENIC COMPANY, INC., PENGUIN MAINTENANCE
AND SERVICES, INC., SOLAR ELECTRICAL SYSTEMS,
INC., AF SUPPLY CORPORATION, SAFWAY ATLANTIC,
LLC, TREX COMMERCIAL PRODUCTS, INC., B.A.C.C.
BUILDERS INC., 20 TSQ GROUND CO LLC, CNY
CONSTRUCTION 701 LLC, ZURICH AMERICAN
INSURANCE COMPANY, FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, MAEFIELD DEVELOPMENT
INC., R & S UNITED SERVICES, INC. S/H/A JOHN DOE,
OTIS ELEVATOR COMPANY, MAEFIELD
DEVELOPMENT CORP., CNY BUILDERS LLC, G-CNY
GROUP LLC, CNY GROUP LLC, CNY CONSTRUCTION
LLC, KENNETH COLAO, STEVEN COLAO, DENNIS
PRUDE, PARAMOUNT PAINTING GROUP, LLC,

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 027) 1071, 1072, 1073,
1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081

were read on this motion to EXTEND LIS PENDENS.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1082, 1083, 1084,
1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092

were read on this motion to EXTEND LIS PENDENS.

The following e-filed documents, listed by NYSCEF document number (Motion 029) 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1129, 1130, 1131, 1132, 1133, 1134, 1137, 1138, 1139, 1140, 1141, 1142

were read on this motion to

CANCEL LIS PENDENS

Pending before the Court are competing motions by a property owner to cancel (MS 029) and two lienholders to extend (MS 027, 028) multiple Notices of Pendency filed against the subject property at 701 Seventh Avenue, New York, NY (the “Property”). For the reasons that follow, the property owner’s motion to cancel the Notices of Pendency (MS 029) is **granted** and the motions to extend two Notices of Pendency (MS 027, 028) are **denied**.

Paramount Painting Group, LLC (“Paramount”), and Otis Elevator Company (“Otis”) filed motions to extend their notices of pendency filed in this action (NYSCEF 482; 693) in connection with mechanics liens they filed on the Property. Otis’s lien was for \$800,000.00, while Paramount’s lien was for \$596,129.01, and they each sought a judgment which would award interest and costs (NYSCEF 482; 693). The Court severed Paramount’s and Otis’s claims when granting Plaintiff Natixis’s motion for summary judgment on March 4, 2021 (NYSCEF 448). Paramount and Otis each claimed in their moving papers that they had not been added to the caption of the severed action, requiring the extension of their Notices of Pendency in this action. This Court signed orders to show cause for their motions to extend the Paramount and Otis Notices on March 29, 2024 (NYSCEF 1079) and April 17, 2024 (NYSCEF 1092), respectively.

On June 18, 2024, Defendant 20 TSQ GroundCo, LLC (“GroundCo”) filed an order to show cause to discharge the Paramount and Otis Notices (NYSCEF 404, 482, 693), as well as to discharge Notices of Pendency filed by defendants (1) CNY Construction 701 LLC (“CNY”) (NYSCEF 384); (2) B.A.C.C. Builders Inc. (“BACC”) (NYSCEF 245); R&S United Services,

Inc. (“R&S”) (NYSCEF 290); Safway Atlantic LLC (“Safway”) (NYSCEF 91); and Texas Scenic Company, Inc. (“Texas Scenic”) (NYSCEF 308, 975).

GroundCo asserted that the underlying liens had been discharged, and therefore the Notices of Pendency should be canceled (NYSCEF 1095 ¶ 3). The Court signed the order to show cause on June 20, 2024, granting expedited briefing (NYSCEF 1127).

CPLR 6501(a) provides that “[a] notice of pendency may be filed in any action in a court of the state . . . in which the judgment demanded would affect the title to, incumbrance of, or the possession, use or enjoyment of, real property[.]” Our courts deem this to be a “procedural prerequisite[.]” and if an action fails to meet this prerequisite because there is no “direct relationship” between the title or possession of the land and the action, “the remedy was denied” (*5303 Realty Corp. v O&Y Equity Corp.*, 64 NY2d 313, 321 [1984]). CPLR 6514(a) requires cancellation of a notice of pendency “if the action has been settled, discontinued or abated[.]” Furthermore, under CPLR 6515, “[i]n any action other than a foreclosure action . . . the court . . . may direct any county clerk to cancel a notice of pendency . . . if the moving party shall give an undertaking in an amount to be fixed by the court.”

Contractors and subcontractors “shall have a lien for the principal and interest, of the value, or the agreed price” of their services “from the time of filing a notice of such lien” (LIEN L. § 3). Discharge of a lien is addressed in Lien Law § 19(4), which provides in part that:

[a] lien other than a lien for labor performed or materials furnished for a public improvement specified in this article, may be discharged as follows:

...

(4) [e]ither before or after the beginning of an action by the owner or contractor executing a bond or undertaking in an amount equal to one hundred ten percent of such lien conditioned for the

payment of any judgment which may be rendered against the property for the enforcement of the lien

Under Lien Law § 17, “[w]here a lien is discharged by deposit or order, a notice of pendency of action shall not be filed.”

BACC, Texas Scenic, and CNY oppose GroundCo’s motion to cancel the notices of pendency, chiefly because GroundCo has not bonded the total amount of judgment *interest* which purportedly has accrued on their claims (NYSCEF 1130 ¶ 6, 1131 ¶ 6, 1133 ¶¶ 3-4). However, the amount of the lien is determined “from the time of filing of the notice” of the lien (LIEN L. § 3). GroundCo has shown that the liens are discharged as a matter of record (NYSCEF 1106, 1109, 1112, 1115, 1118, 1121, 1125). No party has disputed that the bonds cover 110% of the amounts indicated in the lien notices, as required by LIEN L. § 19[4] (*see* NYSCEF 1096-1125). Therefore, the liens are discharged and the Notices of Pendency are properly cancelled because the action no longer “affect[s] the title to, incumbrance of, or the possession, use or enjoyment of, real property” (CPLR 6501(a)).

Therefore, it is

ORDERED that GroundCo’s motion to cancel the notices of pendency (MS 029) is **granted**; it is further

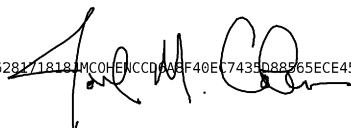
ORDERED that Paramount’s and Otis’s motions to extend their notices of pendency (MS 027, 028) are **denied**; it is further

ORDERED that the above-referenced Notices of Pendency against the property designated as **Block 1000, Lot 1** on the Tax Map for the City of New York and more commonly known as 701 7th Avenue, New York, New York 10036, filed in the office of the Clerk of the County of New York, are hereby canceled of record, and the Clerk of the County of New York be

and is hereby directed to make a note of cancellation on the margin of the records of the Notices of Pendency referring to this order, including:

Filing Date	NYSCEF Number(s)	Filing Party
November 30, 2020	384	CNY Construction 701 LLC
July 6, 2020	245	B.A.C.C. Builders Inc.
December 15, 2020	404	Otis Elevator Company, LLC
April 20, 2021	482	Otis Elevator Company, LLC
December 15, 2021	693	Paramount Painting Group, LLC
June 25, 2020	290	R&S United Services, Inc.
February 5, 2020	91	Safway Atlantic LLC
July 20, 2020	308	Texas Scenic Company, Inc.
June 20, 2023	975	Texas Scenic Company, Inc.

This constitutes the Decision and Order of the Court.


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JOEL M. COHEN, J.S.C.

6/28/2024
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE