

**A&A Custom Floors, Inc. v Hamptons Bldg. Design,
Inc.**

2024 NY Slip Op 34832(U)

September 19, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 621730/2023

Judge: Linda Kevins

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 621730/2023

CAL. No. _____

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY**

P R E S E N T:

MOTION SUBMIT DATE: 07/09/24
MOT. SEQ. # 2 - MG

HON. LINDA KEVINS
Justice of the Supreme Court

-----X
A&A CUSTOM FLOORS, INC.,

Plaintiff,

- against -

HAMPTONS BUILDING DESIGN, INC. and
DAVID HAMAMOTO and MARTHA
HAMAMOTO,

Defendants.
-----X

Upon the following papers e-filed (documents # 32 through # 54); it is

ORDERED that defendants' application, pursuant to Lien Law § 38, seeking an order, *inter alia*, canceling plaintiff's mechanic's lien, is **GRANTED**, and it is further

ORDERED that defendants are awarded \$100.00 in costs on this motion, pursuant to CPLR § 8202, and it is further

ORDERED that upon payment of any required fees, the Suffolk County Clerk is directed to enter judgment in favor of the defendants and against plaintiff in the sum of \$100.00 for the costs awarded herein together with taxable disbursements, pursuant to CPLR § 8301, and it is further

ORDERED THAT ALL COUNSEL (ATTORNEYS OF RECORD-HANDLING ATTORNEYS), AND IF NO COUNSEL, THEN THE PARTY UNLESS THE PARTY IS A CORPORATION AND THEREFORE MUST APPEAR BY COUNSEL [SEE CPLR § 321 (a)], ARE DIRECTED TO APPEAR, IN PERSON, AND IF ANY SETTLEMENT

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REQUIRES THE APPROVAL OF AN INSURANCE AGENT, SUCH AGENT SHALL BE ON TELEPHONE STANDBY, before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, **on December 10, 2024, at 9:30 a.m.**, for a Compliance/Settlement Conference, unless an executed proposed Certification Order or Stipulation of Discontinuance is filed with the Court prior thereto; and it is further

ORDERED that non-appearance will not be countenanced by the Court and may subject the non-appearing party to one or more of the sanctions provided pursuant to Uniform Rules for Trial Courts (22 NYCRR § 202.27) and Rules of the Chief Administrator of the Courts (22 NYCRR § 130-2.1); and it is further

ORDERED that at the call of the calendar, if either party does not appear or proceed or announce their readiness to proceed, the court shall consider an order pursuant to 22 NYCRR § 202.27 as follows: (a) if the plaintiff appears but the defendant does not, the court shall consider granting judgment by default and order an inquest; (b) if the defendant appears but the plaintiff does not, the court shall consider a dismissal of the action and order a severance of counterclaims or cross claims; and (c) if no party appears, the Court shall make such order as appears just; and it is further

ORDERED that appearances by persons with knowledge of the facts and vested with authority to make binding dispositions are required on all court dates unless excused by the Court. (See also 22 NYCRR 202.1) Counsel and parties shall bring with them to all court appearances copies of all relevant documents including courtesy copies of all pleadings, settlement offers, pending motions and affidavits of service comporting with Part 29 Court Rules which may be found in Part 29 and at: www.nycourts.gov/courts/10jd/suffolk/sc_justices.shtml and, if an e-filed case, the e-filed document numbers of same; and it is further

ORDERED that counsel for the parties are directed to confirm that all parties have complied with the Uniform Rules for Trial Courts (22 NYCRR § 202.11 Consultation prior to Preliminary and Compliance Conferences). Please advise the Court of the date of the consultation and what issues were resolved and what is left to be resolved after such consultation, by uploading such information to the e-filing system with notice to all parties and copying the Court by email to sufkevins@nycourts.gov; and it is further

ORDERED that the movants are directed to promptly serve upon the Suffolk County Clerk, notice pursuant to CPLR §8019 [c] together with a copy of this Order and payment of any required fees; and it is further

ORDERED that upon Entry of this Order, the movants are directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff commenced this action to recover alleged damages for breach of contract and for enforcement of its mechanic's lien. In its May 20, 2024 decision and Order this Court granted defendants' application to compel plaintiff to produce an itemized statement of its mechanic's

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lien to the extent that plaintiff was to provide a proper itemized statement within ten days from the date of Notice of Entry. Having provided an itemized statement in accordance with the Court's May 20, 2024 decision and Order, now, defendants move for an order canceling plaintiff's mechanic's lien, pursuant to Lien Law § 38.

In support of the instant motion, defendants submit counsel's affirmation, and a copy of plaintiff's latest itemized statement (e-filed document #46). Defendants state that the latest itemized statement submitted by plaintiff is insufficient and not in compliance with Lien Law § 38.

In opposition, plaintiff submits its counsel's affirmation and an affidavit of Aaron Belodoff, plaintiff's president, and the latest itemized statement (e-filed document # 52) with verification of Mr. Belodoff. E-filed documents #46 and #52 are the same except that e-filed document #52 also contains a verification page. Plaintiff states that its latest itemized statement is sufficient and in compliance with Lien Law § 38.

The Lien Law §38 is the statutory authority for the herein defendants (contractor and owners) to make an application to the court to cancel plaintiff's mechanic's lien.

Cancellation of a mechanic's lien is appropriate where the lien-holder fails to comply with the court's Order requiring an itemized statement (*see DePalo v McNamara*, 139 AD2d 646, 527 NYS2d 283 [2d Dept 1988]; Lien Law § 38).

Here, a review of plaintiff's latest itemized statement (e-filed documents #46 and #52) demonstrates that it fails to comply with Lien Law § 38 and the Court's May 20, 2024 decision and Order as the latest itemized statement only has four invoice numbers with labor costs per hour, material costs based upon square footage, and a total only for each of the four invoice numbers. The dates work was performed, the nature of the labor and/or the description of materials as well as the terms of the contract are not set forth in the latest itemized statement (*Matter of 819 Sixth Ave. Corp. v T.&A. Assoc.*, 24 AD2d 446, 260 NYS2d 984 [1st Dept 1965]) [“Since the statute intended an itemization of the materials and the work 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.”]; *see also Red Hook 160, LLC v Borough Construction Group, LLC*, 204 AD3d 675, 163 NYS3d 838 [2d Dept 2022]). Here, plaintiff's latest submission is insufficient. Therefore, plaintiff's mechanic's lien is cancelled in accordance with *DePalo* and Lien Law § 38.

Accordingly, the motion by defendants to cancel plaintiff's mechanic's lien is granted.

Additionally, defendants' request for an order awarding costs and disbursements is granted to the extent that costs on this motion and taxable disbursements are awarded (CPLR §§ 8202 and 8301).

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Anything not specifically granted herein is hereby denied.

The foregoing constitutes the decision and **Order** of the Court.



LINDA KEAVINS, JSC

Dated: 9.19.24

_____ **FINAL DISPOSITION** **X** **NON-FINAL DISPOSITION**