

NRP Contrs. II LLC v DC Plumbing & Heating, Inc.
2024 NY Slip Op 35089(U)
August 5, 2024
Supreme Court, Westchester County
Docket Number: Index No. 67858/2021
Judge: Linda S. Jamieson
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To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp _____ Dec x Seq. No. 4 Type rearg.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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NRP CONTRACTORS II LLC,

Index No.67858/2021

Plaintiff,

DECISION AND ORDER

-against-

DC PLUMBING & HEATING, INC., DC PLUMBING & HEATING, INC., DC PLUMBING & HEATING OF NY CORP., and DC PLUMBING, INC., all doing business as DC PLUMBING and/or DC PLUMBING & HEATING,

Defendants.

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DC PLUMBING & HEATING INC.,

Plaintiff,

- against -

NRP CONTRACTORS II LLC and LIBERTY MUTUAL INSURANCE COMPANY,

Defendants,

- against -

DC PLUMBING & HEATING, INC., DC PLUMBING & HEATING OF NY CORP., and DC PLUMBING, INC., all doing business as DC PLUMBING and/or DC PLUMBING & HEATING,

Counterclaim Defendants.

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The following papers numbered 1 to 4 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1
Memorandum of Law	2
Memorandum of Law in Opposition	3
Reply Memorandum of Law	4

NRP Contractors II LLC ("NRP") and Liberty Mutual Insurance Company bring their motion seeking (1) an Order pursuant to CPLR § 2221 granting reargument of that part of this Court's Decision and Order dated April 18, 2024 (the "Decision") that dismissed NRP's willful exaggeration of lien counterclaim against DC Plumbing & Heating, Inc., DC Plumbing & Heating of NY Corp., and DC Plumbing Inc. (collectively, "DC Plumbing"); and (2) upon reargument, an Order reinstating this counterclaim; awarding it summary judgment on this counterclaim; vacating and discharging the lien; and awarding damages in the amount of \$907,145.47, together with interest, attorney's fees and costs.

In the Decision, the Court held that NRP had not established its prima facie burden on its willful exaggeration claim:

The Legislature intended the remedy in Lien Law § 39-a to be available only where **the lien was valid in all other respects** and was declared void by reason of willful exaggeration after a trial of the foreclosure action. Moreover, 'the remedy in Lien Law § 39-a requires a finding that the lienor deliberately and intentionally exaggerated the *lien amount*, and is available only where

the lien is otherwise valid.'" *Degraw Constr. Grp., Inc. v. McGowan Builders, Inc.*, 178 A.D.3d 770, 771, 114 N.Y.S.3d 395, 397 (2d Dept. 2019). (Emphasis in bold added; italics in original).

Here, however, plaintiff alleges that the lien was improper in all respects and thus not "otherwise valid." In its memorandum of law, plaintiff summarizes its position simply: "DC Plumbing is not entitled to payment of **any** of the amounts included in the Lien." (Emphasis added). . . . That means that plaintiff contests that even one cent of the lien is valid -- which means that it cannot form the basis for a willful exaggeration claim. . . . Accordingly, the Court finds that not only has plaintiff failed to establish its prima facie case, but it also cannot, as a matter of law, establish its claim for willful exaggeration. Because this cause of action simply cannot be established given plaintiff's allegations, the Court finds that this claim should be dismissed.

It is long established that a motion for reargument "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." *Neo Universe Inc. v. Ito*, 190 A.D.3d 426, 135 N.Y.S.3d 637 (1st Dept. 2021). See also *Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984 N.Y.S.2d 104, 107 (2d Dept. 2014) ("While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented."). "Here, the court did not overlook or misapprehend the [movant's] arguments." *Vaughn v. Veolia Transp., Inc.*, 117 A.D.3d 939,

940, 986 N.Y.S.2d 504, 505 (2d Dept. 2014). Nothing that movants present on this motion convinces the Court otherwise.

On this motion, movants assert that "The requirement that a lien be 'otherwise valid' in order to obtain relief under Lien Law §§ 39 and 39-a means that a court cannot invalidate a lien for willful exaggeration if a lien is discharged for a reason other than willful exaggeration (e.g., untimely under § 10, precluded by agreement, or failing to comply with a Lien Law §38 demand). The fact that the entire amount of the lien is challenged as willfully exaggerated is irrelevant." In support of this argument, they cite a Southern District case, *Baring Industries, Inc. v. 3 BP Property Owner LLC*, 580 F.Supp.3d 41 (SDNY 2022). This case is entirely distinguishable.

While it is true, as movants state, that in *Baring*, the Court held that "plaintiff exaggerated the Lien by its entire value and that plaintiff was not entitled to a lien in any amount," the facts were very different. In *Baring*, the Court held that the "undisputed facts establish that Baring's work on the Leased Property did not result in any permanent improvements within the meaning of the New York Lien Law," which resulted in the lien being entirely improper because "a contractor may have a mechanics lien against a property only if the contractor's work resulted in an 'improvement' to the property. *Baring Indus., Inc. v. 3 BP Prop. Owner LLC*, 580 F. Supp. 3d 41, 48-49

(SDNY 2022). As a result of Baring filing a lien where it was prohibited from doing so by law, because none of its "work resulted in permanent improvements to the Leased Property," "Baring was not entitled to a lien in any amount against the Leased Property." *Id.* at 51-52 ("Baring exaggerated the Lien by its entire value.").

In this case, movants do not assert that DC Plumbing provided "removable, non-permanent equipment," as in *Baring* or that the lien could never have been valid under any circumstances. The Court thus finds that movants "failed to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law," *McGill v. Goldman*, 261 A.D.2d 593, 594, 691 N.Y.S.2d 75, 76 (2d Dept. 1999), and denies the motion in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
August 5, 2024



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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