Benfield Control Sys., Inc. v HIG Servs.
2024 NY Slip Op 35441(U)
May 31, 2024
Supreme Court, Queens County
Docket Number: Index No. 709417/23
Judge: Carmen R. Velasquez
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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BENFIELD CONTROL SYSTEMS, INC., ET AL.,

Plaintiffs,

-against-

HIG SERVICES, ET AL.,

Defendants.

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Index No. 709417/23

Motion Date: February 5, 2024

M# 1

The following papers numbered EF 18-49 read on this motion by defendants Racanelli Construction Company Inc. (Racanelli) and Liberty Mutual Insurance Company (collectively moving defendants) for summary judgment dismissing the sixth cause of action.

	Papers Numbered
Notice of Motion - Affidavit - Exhibits..........	EF 18-32
Answering Affirmation-Affidavit-Exhibits.........	EF 34-48
Reply Affirmation..............................	EF 49

Upon the foregoing papers it is ordered that the motion is determined as follows:

On May 5, 2023, the plaintiffs Benfield Control Systems, Inc. (BCS) and Benfield Electric Supply Co., Inc. commenced this action to recover damages from defendant HIG Services Inc. for its failure to pay for supplies and materials they provided for various construction projects. One of the projects occurred on premises owned by nonparty 188-11 Hillside Partners LLC (Owner), for which Racanelli served as general contractor. BCS filed a mechanic's lien in the amount of $249,433.63 for the unpaid supplies and materials for this project. In the sixth cause of action, BCS seeks to foreclose on a mechanic's lien and extinguish any liens held by moving defendants, defendants Lorian Electric Corp. d/b/a Star Electric Supply, and defendants JOHN DOE No. 1 through JOHN DOE No. 100. Moving defendants now seek summary judgment dismissing the sixth cause of action and cancelling and discharging the mechanic's lien.

As a materialman that furnished materials for improvement of real property at a subcontractor's request, BCS has a lien for the principal and interest of the agreed price of the materials due and payable upon the improved real property from the time it filed its lien (*see* Lien Law § 3; *West-Fair Elec. Contrs. v Aetna Cas. & Sur. Co.*, 87 NY2d 148, 157-58 [1995]; *Davidson Pipe Supply Co. v Wyoming County Indus. Dev. Agency*, 85 NY2d 281, 285 [1995]). "If labor is performed for, or materials furnished to, a contractor or subcontractor for an improvement, the lien shall not be for a sum greater than the sum earned and unpaid on the contract at the time of filing the notice of lien, and any sum subsequently earned thereon. In no case shall the owner be liable to pay by reason of all liens created pursuant to this article a sum greater than the value or agreed price of the labor and materials remaining unpaid, at the time of filing notices of such liens, except as hereinafter provided" (Lien Law § 4 [1]; *see West-Fair Elec. Contrs.*, 87 NY2d at 157-58). The amount of a mechanic's lien may not exceed the total amount the owner owes the general contractor at the time the lien is filed (*see NGU, Inc. v City of New York*, 189 AD3d 850, 852 [2d Dept 2020]; *C.C.C. Renovations, Inc. v Victoria Towers Dev. Corp.*, 168 AD3d 664, 666 [2d Dept 2019]; *Peri Formwork Sys., Inc. v Lumbermens Mut. Cas. Co.*, 112 AD3d 171, 176 [2d Dept 2013]). A subcontractor's right to recover under a mechanic's lien derives from the general contractor's right, so if the owner owes nothing to the general contractor when the lien is filed, the subcontractor cannot recover (*see NGU, Inc.*, 189 AD3d at 852; *C.C.C. Renovations, Inc.*, 168 AD3d at 666; *Peri Formwork Sys., Inc.*, 112 AD3d at 176). Each subcontractor is subrogated to the rights of the contractor or subcontractor above (*see NGU, Inc.*, 189 AD3d at 852; *Peri Formwork Sys., Inc.*, 112 AD3d at 176-77). Applying those principles here, BCS is subrogated to the rights of HIG, whose rights are subrogated to Racanelli. Therefore, BCS may not enforce its lien in excess of the amount owed to it by HIG, the amount owed by Racanelli to HIG, or the amount owed by Owner to Racanelli (*see Peri Formwork Sys., Inc.*, 112 AD3d at 177).

Here, moving defendants present no evidence regarding any amount HIG owed to BCS or any amount Owner owed to Racanelli. Moving defendants contend that no lien funds remain from which BCS may enforce its mechanic's lien because Racanelli paid $2,402,616.46 to HIG on its subcontract before Racanelli terminated it and paid $909,994.20 to nonparty Genmar Electrical Contracting (Genmar) after Racanelli hired it to correct and complete HIG's subcontract work. Moving defendants contend that change orders increased the HIG subcontract amount to $3,081,877.48 and that since Racanelli paid $230,733.18 in costs over that subcontract amount, no surplus funds remain. In support of their argument, they present Racanelli's subcontract with HIG for $2,670,000.00 and

Racanelli's subcontract with Genmar, which was not to exceed $1,195,000.00. In addition, moving defendants present an affidavit sworn November 16, 2023, in which Martin J. Racanelli, Jr., Racanelli's treasurer, attested that the HIG subcontract was increased by change orders and referred to an unsworn application for payment by HIG dated October 18, 2022, which indicated that the owner approved change orders in the amount of $411,877.48.

In opposition, plaintiffs contend that moving defendants' evidence demonstrates the existence of funds against which BCS's mechanic's lien filed on November 17, 2022 may be enforced. Plaintiffs point to HIG's application for payment indicating work completed to date in the amount of $2,899,585.73 and argue that since Racanelli's record indicates it paid HIG $2,402,615.46, as of September 27, 2022, at least $496,970.27 remained unpaid to HIG from Racanelli from which BCS could enforce its lien. Plaintiffs further note that although Racanelli's subcontract with Genmar was dated November 4, 2022, Racanelli's record indicates its first payment to Genmar in the amount of $29,928.20 was on December 23, 2022, after BCS filed its lien. Since moving defendants' evidence fails to eliminate factual issues as to whether Racanelli owed payments to HIG under the subcontract at the time BCS filed its mechanic's lien, summary judgment dismissing the sixth cause of action to foreclose on the mechanic's lien is unwarranted (*see J&M Indus., Inc. v Red Apple 180 Myrtle Ave. Dev., LLC*, 197 AD3d 1154, 1156 [2d Dept 2021]; *NGU, Inc.*, 189 AD3d at 852; *M & V Concrete Contr. Corp. v Modica*, 76 AD3d 614, 616 [2d Dept 2010]; *see also Turbo Carpentry Corp. v Brancadoro*, 21 AD3d 479, 480 [2d Dept 2005]).

Moving defendants' argument in reply that plaintiffs misinterpret HIG's payment application because it does not reflect the amount approved by Racanelli and Owner further illustrates the existence of fact issues (*see generally Hall Enters., Inc. v Liberty Mgt. & Constr., Ltd.*, 37 AD3d 658, 659 [2d Dept 2007]; *380 Yorktown Food Corp. v Great Atl. & Pac. Tea Co., Inc.*, 30 AD3d 403, 406 [2d Dept 2006]). Moving defendants also improperly contend for the first time in reply that the $2,402,616.46 paid to HIG was the final amount approved by Racanelli and Owner.

Considering denial of moving defendants' summary judgment motion, the court need not address plaintiff's contentions that the summary judgment motion is premature (*see* CPLR 3212 [f]). The parties should comply with any outstanding discovery requests and orders to the extent they have not already done so.

Accordingly, this motion by defendants Racanelli Construction Company Inc. and Liberty Mutual Insurance Company for summary judgment is denied.

Dated: May 31, 2024

CARMEN R. VELASQUEZ, J.S.C.