

Rock Group NY Corp. v Blue Rock Contr., Inc.
2024 NY Slip Op 35565(U)
February 21, 2024
Supreme Court, Queens County
Docket Number: Index No. 720899/2022
Judge: Leonard Livote
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SHORT FORM ORDER

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NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Leonard Livote

Supreme Court Justice

COMMERCIAL DIVISION PART A

-----X
ROCK GROUP NY CORP.,

Index No: 720899/2022

Plaintiff,

-against-

Motion Date: 11/14/2023

BLUE ROCK CONTRACTING, INC.,
AA 304 GC TIC, LLC, and
NEW YORK COMMUNITY BANK,

Seq. No: 1

and

John Doe "1" through John Doe "10", the last ten names being fictitious and unknown to plaintiff the third persons or corporations, if any, having or claiming an interest in or lien upon the real property described in the Complaint,

Defendants.

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The following papers numbered below read on this motion by Defendant for an Order: granting Defendant AA 304 GC TIC, LLC's motion pursuant to CPLR §§ 3211(a)(1) and (7) to: (1) dismiss Plaintiff Rock Group NY Corp.'s third cause of action for the foreclosure of Plaintiff's mechanic's lien filed on October 13, 2021 ("Lien"), and the fourth cause of action for unjust enrichment; (2) discharge Plaintiff's invalid and untimely Lien; (3) vacate the Notice of Pendency dated October 7, 2022; and (4) granting such other and further relief as is just, necessary, and proper.

PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavits and Exhibits.....	10-25, 32
Cross Motion, Affirmation, Affidavits and Exhibits.....	
Answering Affirmations, Affidavits And Exhibits.....	26-30
Reply Affirmations, Affidavits And Exhibits.....	31
Other	

Upon the foregoing papers, the motion is decided as set forth below.

In September 2016, Defendant AA 304 GC TIC, LLC (“AA 304”) hired Defendant Blue Rock Contracting, Inc. (“Blue Rock”) to perform demolition work at 40-31 82nd Street, Queens, New York (the “Property”). AA 304 is a co-owner of the property. The other Property co-owners have not been named in this action.

Plaintiff alleges that in November 2016, it entered into a contract with Blue Rock as a subcontractor to supply labor and materials to the Property in support of Blue Rock’s work. Plaintiff claims that it is owed funds for its work and materials and filed a mechanic’s lien in October 2021.

“On a motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Rabos v. R & R Bagels & Bakery, Inc.*, 100 AD3d 849, 2012 N.Y. Slip Op 07974, 2012 WL 5870676 [2nd Dept 2012]).

To grant a motion to dismiss due to “a defense that is founded upon documentary evidence” pursuant to CPLR §3211(a)(1), the evidence in question must “utterly refute the plaintiff’s allegations and establish a defense as a matter of law.” (*See Goshen v. Mutual Life Ins. Co.*, 98 NY2d 314,[2002]). “To be considered ‘documentary,’ evidence must be unambiguous and of undisputed authenticity” (*Fontanetta v Doe*, 73 AD3d 78, 86 [2d Dept 2010]).

With respect to Plaintiff’s cause of action for foreclosure of the mechanic’s lien, AA 304 is entitled to dismissal. Lien Law § 10 requires that a mechanic’s lien be filed within eight months after the lienor finishes its work or last furnishes materials (*Riv. Ave. Rest. Corp. v Style & Care, Inc.*, 117 AD3d 530, 530 [1st Dept 2014]). Here, the phase of the project that Blue Rock worked on was

completed in February 2018. The entire project was finished by September 15, 2020. Plaintiff admits that it did not return to the Property after April 2018. No possible construction of the timeline of Plaintiff's work on the project could result in Plaintiff having last finished work or furnished materials later than April 30, 2018. Plaintiff's argument that it can indefinitely extend the lien filing deadline simply by leaving materials at the Property is without merit. Thus, Plaintiff had, at the latest, until December 30, 2019 to file a mechanic's lien for work done on the Property, but it did not do so until October 2021. Plaintiff's mechanic's lien is, therefore, untimely and invalid. Accordingly, the branch of the motion to dismiss the cause of action for foreclosure on the lien and to discharge the lien is granted.

With respect to Plaintiff's claim for unjust enrichment, AA 304 is entitled to dismissal. "[A] property owner who contracts with a general contractor does not become liable to a subcontractor on a quasi-contract theory unless it expressly consents to pay for the subcontractor's performance" (*Perma Pave Contr. Corp. v Paerdegat Boat and Racquet Club, Inc.*, 156 AD2d 550, 551 [2d Dept 1989]). The mere fact that an owner has consented to the improvements provided by a subcontractor and accepted their benefit does not render it liable to the subcontractor, whose sole remedy is against the general contractor (*Contelmo's Sand & Gravel, Inc. v J & J Milano, Inc.*, 96 AD2d 1090, 1090 [2d Dept 1983]). Here, Blue Rock as general contractor hired Plaintiff as a subcontractor. Plaintiff has failed to plead facts that would suggest AA 304 expressly consented to pay for Plaintiff's work. Accordingly, the branch of the motion to dismiss Plaintiff's cause of action for unjust enrichment is granted.

With respect to the branch of the motion to cancel the notice of pendency because there are still pending claims against other Defendants, the branch of the motion is denied. Accordingly, it is

ORDERED, that Plaintiff's third and fourth causes of action are dismissed; and it is further

ORDERED, that the case as against AA 304 GC TIC, LLC is dismissed; and it is further

ORDERED, that the mechanic's lien is discharged; and it is further

ORDERED, that the caption is to be amended as follows:

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ROCK GROUP NY CORP.,

Plaintiff,

-against-

BLUE ROCK CONTRACTING, INC. and
NEW YORK COMMUNITY BANK,

and

John Doe "1" through John Doe "10", the last ten
names being fictitious and unknown to plaintiff the
third persons or corporations, if any, having or
claiming an interest in or lien upon the real
property described in the Complaint,

Defendants.

-----X

Any other and/or further relief requested and not specifically addressed is
denied.

This constitutes the Order of the Court.

Dated: 2/21/2024



Leonard Livote, J.S.C.

