

**New York HVAC Specialist Corp. v All Boro Cleaning
Servs., Inc.**

2025 NY Slip Op 32475(U)

July 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 510175/2024

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 510175/2024
Motion Date: 7/29/24
Mot. Seq. No.: 1 and 2

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NEW YORK HVAC SPECIALIST CORP.,

Plaintiff.

-against-

ALL BORO CLEANING SERVICES, INC., d/b/a
ALL BORO. 57 WILL PROPERTY LLC, CRE
EXPERT CLEANING INC., ARSENAL
SCAFFOLD INC., CENTURY BUILDING
MATERIALS, LLC, DYNAMIC AIR TEC CORP.,
and MODERNFOLD/STYLES INC..

DECISION/ORDER

Defendants.
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This is an action commenced by plaintiff-subcontractor NEW YORK HVAC SPECIALIST CORP. (“plaintiff”) against (among others) 57 WILL PROPERTY LLC (“57-Will”), as the owner of the renovated commercial real property at 57 Willoughby Street in Brooklyn, New York (the “underlying property”), and ALL BORO CLEANING SERVICES, INC. (“All Boro”), as the renovation project’s general contractor at the underlying property. Plaintiff requests two categories of relief as against 57-Will. First, plaintiff seeks to foreclose its mechanic’s lien in the sum of \$126,400 for the work it allegedly performed at the underlying property from June 21, 2022 to February 8, 2023.¹ In that regard, plaintiff advances three predicates for recovery; namely, unjust enrichment, enforcement of a statutory trust, and breach of a fiduciary duty in the third, fifth, and sixth causes of action of its complaint, respectively (collectively, the

¹ Notice of Mechanic’s Lien Law, dated July 7, 2023 (NYSCEF Doc No. 27).

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“mechanic’s lien claim”).² Second, plaintiff seeks an award of \$20,000 against 57-Will (among other defendants) for the value of the specialized construction tools which plaintiff allegedly could not retrieve at the conclusion of its work at the underlying property. To that end, plaintiff advances a separate set of three predicates for recovery; namely, conversion, bailment, and negligence as pleaded in the eighth, ninth, and tenth causes of action of its complaint, respectively (collectively, the “missing-tools claim”).³

Upon the e-filed documents, listed by NYSCEF as item numbers 12-17, 20-29, 33-44, and 45-47, 57-Will moves for an order, pursuant to CPLR 3211 (a), dismissing plaintiff’s mechanic’s lien and missing tool claims (Seq. No. 1) (the “motion to dismiss”). Separately, 57-Will moves for an order, pursuant to Lien Law § 44 (5), vacating and canceling the mechanic’s liens on the underlying property filed by each of co-defendants ARSENAL SCAFFOLD INC., CENTURY BUILDING MATERIALS, LLC, DYNAMIC AIR TEC CORP., and MODERNFOLD/STYLES INC. (Seq. No. 2) (the “lien-cancellation motion”).

The initial branch of 57-Will’s motion to dismiss which is addressed to plaintiff’s mechanic’s lien claim is *denied as premature*. It is critical to the Court’s determination that 57-Will (aside from being named as one of defendants in this action) is the principal defendant in the related action which was commenced by All Boro against 57-Will on

² Complaint, dated April 9, 2024, ¶¶ 48-56, 66-77, and 78-85 (NYSCEF Doc No. 14).

³ Complaint, ¶¶ 91-95, 96-101, and 102-107.

April 18, 2024 under index No. 511123/24, Sup Ct. Kings County (the “related action”).⁴ Therein, All Boro alleges that 57-Will “currently owes All Boro the principal sum of \$1,101,254.77 for the work, labor, materials, equipment and services that All Boro furnished at and for the [underlying property]” for the period from “on or about June 22, 2022 and through May 20, 2023.”⁵ By order, dated December 9, 2024, the Court (Sweeney, J.) stayed the related action, at 57-Will’s request, until the parties conclude their arbitration in accordance with the prime contract.⁶ The ongoing arbitration between All Boro and 57-Will makes it clear that All Boro’s “Conditional and Partial Release and Waiver of Claims, Liens, and Rights of Contractor for the period end[ed] April 11, 2023,” dated April 19, 2023, is not a final and binding document, as 57-Will purports it to represent.⁷ Accordingly, dismissal of plaintiff’s mechanic’s lien claim is premature at this stage of litigation because the arbitration (when concluded) has a potential trickle-down effect on plaintiff’s recovery in this action.

The remaining branch of 57-Will’s motion to dismiss which is addressed to plaintiff’s missing-tools claim is *granted* as to the negligence predicate (the tenth cause of action) but is *denied* as to the conversion and bailment predicates (the eighth and ninth

⁴ The complaint in the related action is part of the record in this action under NYSCEF Doc No. 43 (the “related-action complaint”).

⁵ Related-Action Complaint, ¶¶ 12 and 7, respectively.

⁶ The NYSCEF Docket in the Related Action, Document No. 16. Further, All Boro, as a defendant in this action, counterclaimed against plaintiff-subcontractor for (among other things) willfully exaggerating the latter’s mechanic’s lien against the underlying property in the amount of \$126,400. All Boro’s Verified Answer and Counterclaims, dated June 18, 2024, ¶¶ 150-152 (NYSCEF Doc No. 30). Plaintiff replied to All Boro’s counterclaims (NYSCEF Doc No. 32).

⁷ NYSCEF Doc No. 16.

causes of action, respectively). The complaint, as amplified by plaintiff's president's affirmation in opposition,⁸ sufficiently pleads the conversion and bailment predicates of the missing-tools claim. With respect to the conversion predicate, plaintiff sufficiently pleaded "legal ownership or an immediate superior right of possession to a specific identifiable thing[,] and . . . that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's rights." *Cusack v Am. Defense Sys., Inc.*, 86 AD3d 586, 587 (2d Dept 2011). With respect to the bailment predicate, the Court notes that "[a] bailment may arise from the bare fact of the thing coming into the actual possession and control of a person fortuitously, or by mistake as to the duty or ability of the recipient to effect the purpose contemplated by the absolute owner." *Wikiert v City of New York*, 128 AD3d 128, 132 (2d Dept 2015) (internal quotation marks omitted), *lv denied* 26 NY3d 902 (2015). Here, plaintiff sufficiently pleaded in support of the bailment predicate that 57-Will (among other defendants): (1) agreed to safeguard plaintiff's tools on the underlying property for plaintiff's benefit; (2) had the sole and exclusive control over the tools; (3) breached the bailment agreement by failing to safeguard the tools; and (4) refused to return the tools upon demand. *See Wikiert*, 128 AD3d at 134.

Contrary to 57-Will's contention, its documentary evidence failed to "refute[] the plaintiff's factual allegations" and did not "conclusively establish[] a defense as a matter

⁸ Affirmation of Braulio Cuevas in Opposition to 57 Will Property LLC's Motion to Dismiss the Complaint, dated July 22, 2024, ¶¶ 7-13 (NYSCEF Doc No. 33).

of law.” *Security Tit. Guar. Corp. of Baltimore v Old Republic Natl. Tit. Ins. Co.*, ___ AD3d ___, 2025 NY Slip Op 03835, *1-2 (2d Dept 2025). The terms of 57-Will’s prime contract with All Boro (to which plaintiff was not a party) did not (and could not) “absolve” it from the missing-tools claim. Further, the affirmation of 57-Will’s principal⁹ was “not documentary evidence because its contents can be controverted by other evidence, such as another [affirmation or] affidavit.” *Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 (2d Dept 2017).

Conversely, plaintiff’s remaining predicate of negligence in support of its missing-tools claim is duplicative of the aforementioned conversion and bailment predicates. *See Jackson v Casino Towing Serv., Inc.*, 78 Misc 3d 135(A), 2023 NY Slip Op 50460(U), *2 (App Term, 2d Dept. 2d, 11th & 13th Jud Dist 2023).

Lastly, 57-Will’s lien-cancellation motion which is addressed to the codefendants’ mechanic’s liens must also be *denied* as premature because of its ongoing arbitration with All Boro. As was the instance with plaintiff’s mechanic’s lien claim, the codefendants’ recoveries on their respective mechanic’s lien claims may also be potentially affected by the trickle-effect of the outcome of the arbitration.

⁹ Affirmation of Jeffrey M. Kaplan in Further Support of Defendant 57[-]Will’s Motion to Dismiss, dated July 26, 2024 (NYSCEF Doc No. 45).

Accordingly, it is

ORDERED that, in Seq. No. 1, 57-Will's pre-answer motion to dismiss is *granted solely to the extent* that plaintiff's tenth cause of action for negligence is dismissed as against it, and the remainder of its motion to dismiss is denied; and it is further


ORDERED that 57-Will is directed to answer the extant portions of the complaint within twenty days after service of this decision/order with notice of entry by plaintiff's counsel on the other parties' counsel; and it is further

ORDERED that, in Seq. No. 2, 57-Will's motion to vacate and cancel the codefendants' mechanic's liens is denied; and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this Decision/Order with notice of entry on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the Decision/Order of the Court.

PTH
Dated: July_, 2025



PETER P. SWEENEY, J.S.C.