

Core & Main LP v V. Barile Inc.

2025 NY Slip Op 32707(U)

July 28, 2025

Supreme Court, New York County

Docket Number: Index No. 155610/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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CORE & MAIN LP,

Plaintiff,

- v -

V. BARILE INC., SMI MMS, L.L.C. D/B/A MANHATTAN
MINI STORAGE

Defendant.

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INDEX NO. 155610/2024

MOTION DATE 12/18/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

The defendant, SMI MMS, L.L.C. d/b/a Manhattan Mini Storage ("MMS"), moves this Court for an Order, pursuant to CPLR 3212, granting summary judgment in its favor and dismissing the claims brought by Plaintiff, Core & Main LP ("Core & Main").

MMS initiated this motion for summary judgment on December 18, 2024, supported by the affirmation of Michael A. Spizzuco, Jr., Esq., and an affirmation from Greg Maser, the Vice President of MMS. Core & Main opposes the motion, arguing that MMS has failed to meet its prima facie burden. In response to Core & Main's opposition, MMS submitted a brief in further support of its motion, along with an affirmation from Jeannie Perry, a Construction Assistant for MMS, providing additional evidence of payments.

The undisputed facts establish the following:

- MMS is the owner of real property located at 510 West 21st Street, New York, New York (the "Property").

- On or about February 9, 2022, MMS entered into a Master Contract for Installation, Construction & Related Services (the "Master Agreement") with V. Barile, Inc. ("Barile") for construction-related services at the Property.

- A task order issued under the Master Agreement on February 9, 2022, initially required Barile to install a fire-sprinkling system for \$129,000.00. This task order was later amended to a total contract value of \$492,475.00 for additional sprinkler services.

- Between April 30, 2022, and May 15, 2023, MMS remitted \$146,011.07 to Barile for its work at the Property. This left an unpaid balance of \$346,463.93 on Barile's Amended Task Order.
- Core & Main LP ("Plaintiff") filed a mechanic's lien on the Property on July 14, 2023, alleging \$32,698.06 worth of unpaid materials provided to Barile.
- Barile failed to perform its obligations under the Master Agreement and Amended Task Order, abandoning the construction project.
- MMS notified Barile of its default on September 28, 2023, due to the filed mechanic's liens and failure to pay suppliers. MMS also sent multiple demands to Core & Main LP to discharge the lien.
- On October 18, 2023, MMS entered into a Replacement Contract with AllState Sprinkler, LLC ("AllState") to complete Barile's work at the Property. The Replacement Contract initially required \$492,300.00 to be paid to AllState. MMS states it obtained other bids for the replacement work and chose the cheaper option.

Crucially, in its further support of the motion, MMS submitted the affirmation of Jeannie Perry, a Construction Assistant, along with accounting records, demonstrating that MMS has actually remitted \$467,300.00 to AllState as of April 11, 2025, for the completion of the work.

Summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party (CPLR § 3212[b]). The proponent of a summary judgment motion, herein "moving party", must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate an absence of any material issues of fact (*see Pullman v Silverman*, 28 NY3d 1060, 1062-1063 [2016]). The moving party's failure to make a prima facie showing of entitlement requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal citations omitted]). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Conclusory allegations, expressions of hope, or mere denials are insufficient to either warrant or defeat summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *McGahee v Kennedy*, 48 NY2d 832, 834 [1979]).

When reviewing a motion for summary judgment, the non-moving party's facts must be accepted as true and the benefit all favorable inferences which may be drawn therefrom (*Asabor v Archdiocese of New York*, 102 AD3d 524, 527 [1st Dept 2013]; *Demshick v Community Hous. Mgt. Corp.*, 34 AD3d 518, 520 [2d Dept 2006]). Accordingly, a motion should not be granted where there is any doubt as to the existence of a factual issue, conflicting inferences may be drawn, or where there are issues of credibility, as those are the functions of a jury (*Id.*).

The core legal principle governing this motion is the "no lien fund" rule in mechanic's lien law. New York Lien Law § 4 explicitly states that "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". This means a mechanic's lien is derivative, limited by what is owed by the owner to the general contractor at the time the lien is filed (*see Peri Formwork Systems, Inc. v Lumbermens Mut. Cas. Co.*, 112 AD3d 171, 176 [2d Dept 2013]; *Matros Automated Elec. Constr. Corp. v Libman*, 37 AD3d 313 [1st Dept 2007]) The burden rests upon the lien claimant to establish that money was due and payable to the general contractor from the owner under the primary contract (*see Timothy Coffey Nursery/Landscape v Gatz*, 304 AD2d 652, 654 [2d Dept 2003]).

Crucially, under New York law, when a general contractor abandons a project and the owner must retain a replacement contractor, if the total cost to complete the project exceeds the amount remaining unpaid on the initial contract, then no lien fund exists because there are no funds due to the original general contractor. The proposition is that a subcontractor's lien can only be satisfied out of funds due and owing from the owner to the general contractor and if there is no money due to the general contractor, then there is no fund for the lien to attach to (*see IMP Plumbing & Heating Corp. v 317 East 34th Street, LLC*, 89 AD3d 593, 594 [1st Dept 2011]).

MMS has established, prima facie, that no lien fund exists. The original Amended Task Order between MMS and Barile had a total value of \$492,475.00. MMS paid Barile \$146,011.07, leaving an unpaid balance of \$346,463.93 on Barile's contract. Barile subsequently defaulted and abandoned the project. MMS then engaged AllState Sprinkler, LLC, as a replacement contractor to complete the work. MMS explicitly states it received multiple bids and chose the cheaper option for the replacement work. The Replacement Contract was for \$492,300.00.

In its opposition, Core & Main argued that MMS had not provided evidence of actual payments made to AllState, asserting that merely stating a contract required or was to be paid a certain amount was insufficient to prove the absence of a lien fund. Core & Main contended that in cases supporting the "no lien fund" rule, the owner or general contractor had actually paid the completion costs. In reply, MMS directly addressed this argument by submitting a further supporting affirmation from Jeannie Perry, a Construction Assistant for MMS. Ms. Perry's affirmation demonstrated that MMS has, in fact, remitted \$467,300.00 to AllState for the completion of the project, as evidenced by attached accounting records. The cost incurred by MMS to complete the project with AllState (\$467,300.00) exceeds the amount remaining unpaid on Barile's original contract (\$346,463.93) by \$120,836.07 (\$467,300.00 - \$346,463.93 = \$120,836.07). Since the cost to complete the project with the replacement contractor demonstrably exceeded the amount unpaid on the original contract, New York law dictates that no lien fund exists to which Core & Main's mechanic's lien can attach. MMS has satisfied its prima facie burden by providing clear and admissible evidence of this fact. Core & Main's opposition primarily hinged on the lack of proof of actual payment, which MMS subsequently provided, leaving no genuine issue of material fact for trial.

Based on the foregoing, the Court finds that MMS has established its entitlement to summary judgment as a matter of law. Core & Main LP has failed to demonstrate the existence

of any triable issues of material fact that would prevent the application of the "no lien fund" doctrine.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by Defendant SMI I MMS, L.L.C. d/b/a Manhattan Mini Storage is Granted; and it is further

ORDERED that Plaintiff Core & Main LP's Complaint is Dismissed in its entirety as against Defendant SMI I MMS, L.L.C. d/b/a Manhattan Mini Storage; and it is further

ORDERED that the mechanic's lien filed by Plaintiff Core & Main LP on July 14, 2023, against the property located at 510 West 21st Street, New York, New York, designated as Block 692, Lot 41, is hereby Discharged; and it is further

ORDERED that any requests for legal fees and costs by MMS are subject to a separate motion upon a demonstration of a contractual or statutory basis.

This constitutes the Decision and Order of the Court.


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<u>7/28/2025</u> DATE					<u>NICHOLAS W. MOYNE, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE