

**Exclusive Restoration & Dev. LLC v Manhattan
Nursing Home Realty, Inc.**

2025 NY Slip Op 32923(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 652707/2024

Judge: James G. Clynes

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

-----X

EXCLUSIVE RESTORATION & DEVELOPMENT LLC,

Plaintiff,

- v -

MANHATTAN NURSING HOME REALTY, INC.,
NORTHERN MANHATTAN NURSING HOME, INC., and
JOHN DOES 1-10,

Defendants.

-----X

INDEX NO. 652707/2024

MOTION DATE 05/29/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for JUDGMENT - DEFAULT

In this action to, inter alia, foreclose on a mechanic's lien, plaintiff Exclusive Restoration & Development LLC moves, pursuant to CPLR 3215, for a default judgment against defendants Manhattan Nursing Home Realty, Inc. (Manhattan Nursing) and Northern Manhattan Nursing Home, Inc. (Northern Manhattan) (together, defendants). The motion is unopposed.

Manhattan Nursing owns the building located at 116 East 125th Street, New York, New York 10035 (Block 01773, Lot 0007), and leases it to Northern Manhattan (NY St Cts Elec Filing [NYSCEF] Doc Nos. 13-14, Repke affirmation, exhibits 4-5). In April 2019, Northern Manhattan hired plaintiff pursuant to a written agreement under which plaintiff agreed to perform exterior facade brick replacement and pointing work at the building for a contract price of \$23,640 (NYSCEF Doc No. 16, John DeGaetano [DeGaetano] aff, exhibit 1). Plaintiff furnished labor and materials at the building in accordance with the agreement, but despite due demand, Northern Manhattan has not paid it the full contract amount, which had increased to \$29,805 (NYSCEF Doc No. 10, Repke affirmation, exhibit 10, ¶¶ 8-10).

On June 6, 2022, plaintiff served a notice of mechanic's lien in the amount of \$29,805 upon defendants and, on June 10, 2022, plaintiff filed the lien in the Office of the County Clerk, eight months after the last day plaintiff had furnished labor and materials at the premises (id., ¶¶ 40 and 44). Plaintiff obtained an extension of the lien on June 8, 2023 (id., ¶ 46).

Plaintiff commenced this action by filing a summons and complaint, together with a notice of pendency, on May 24, 2024 (NYSCEF Doc No. 10). The complaint pleads five causes of action for: (1) breach of contract against Northern Manhattan; (2) quantum meruit against Northern Manhattan; (3) a violation of the Prompt Payment Act (PPA) (General Business Law 756-a) against Northern Manhattan; (4) an account stated against Northern Manhattan; and (5) a mechanic's lien foreclosure against defendants. Plaintiff now moves for a default judgment.¹

A motion for a default judgment must be supported with “proof of service of the summons and the complaint[,] ... proof of the facts constituting the claim, the default and the amount due” (CPLR 3215 [f]; *see also Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). The plaintiff must also offer “some proof of liability ... to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). A party in default “admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages” (*Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730, [1984]).

The affidavits of service reveal that on May 30, 2024, plaintiff served defendants with process pursuant to Business Corporation Law 306 by delivering duplicate copies of the summons, complaint, notice of pendency and notice of electronic filing upon the Secretary of State; plaintiff filed proof of service with the Clerk the next day (NYSCEF Doc No. 11, Repke affirmation, exhibit 2). Service upon defendants was complete when the Secretary of State was served (*see Fisher v Lewis Constr. NYC Inc.*, 179 AD3d 407, 408 [1st Dept 2020]), and plaintiff has demonstrated that neither defendant has answered or otherwise appeared in this action within the time prescribed in CPLR 320 (a).

Plaintiff has established its compliance with CPLR 3215 (g) (4) (i) and (ii) by mailing an additional copy of the summons and complaint, together with a notice stating that service had been effectuated under Business Corporation Law § 306, to defendants on May 31, 2024 (NYSCEF Doc No. 12, Repke affirmation, exhibit 3).

The verified complaint and the affidavit from plaintiff’s principal, DeGaetano, demonstrate the prima facie validity of the fifth cause of action to foreclose on its mechanic’s lien (*see American*

¹ Plaintiff addressed only the second and fifth causes of action in its moving papers.

Constr. Inc. v Radu Physical Culture, LLC, 93 AD3d 580, 580 [1st Dept 2012]; *Curtis Partitions Corp. v Halpern Constr., Inc.*, 43 AD3d 744, 744 [1st Dept 2007]). DeGaetano has averred that plaintiff furnished labor and materials to Northern Manhattan, that Manhattan Nursing was aware of and consented to the improvements, and that \$29,805 of the agreed-upon contract price has not been paid (NYSCEF Doc No. 15, DeGaetano aff, ¶¶ 9-13). Plaintiff, a contractor for purposes of Lien Law 2 (9), has complied with the timeframes set forth in Lien Law 10 and 11 regarding the service and filing of the notice of lien. The notice of lien contains the requisite information required under Lien Law 9, and plaintiff has shown that the lien has not been discharged (*see* Lien Law 19). Plaintiff has also established that it filed a notice of pendency and commenced a foreclosure action within one year from the filing of the mechanic's lien (*see* Lien Law 17). Accordingly, plaintiff is entitled to a judgment of foreclosure and sale of the subject property.

Plaintiff, however, has failed to demonstrate a viable second cause of action under the PPA. The PPA applies to construction contracts “where the aggregate cost of the construction project including all labor, services, materials and equipment to be furnished, equals or exceeds one hundred fifty thousand dollars” (General Business Law 756 [1]; *see also Matter of Capital Siding & Constr., LLC (Alltek Energy Sys., Inc.)*, 138 AD3d 1265, 1266 [3d Dept 2016]). In this case, plaintiff has failed to establish that the Agreement meets this minimum threshold amount.

Finally, plaintiff has not advanced any arguments on its first cause of action for breach of contract, its second cause of action for quantum meruit or its fourth cause of action for an account stated, all pled against Northern Manhattan. Nonetheless, the court need not address the remaining causes of action, which are duplicative of the fifth cause of action seeking to foreclose on a mechanic's lien (*see King C Steel Works LLC v Saga Mgt. Group, Inc.*, 2023 NY Slip Op 30666[U], *2-3 [Sup Ct, NY County 2023], citing *240-35 Assoc. v Major Bldrs. Corp.*, 234 AD2d 234, 234-235 [1st Dept 1996]).

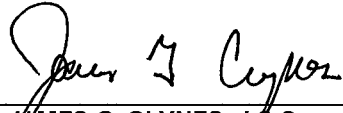
Accordingly, it is

ORDERED that the motion brought by plaintiff Exclusive Restoration & Development LLC for entry of a default judgment against defendants Manhattan Nursing Home Realty, Inc. and Northern Manhattan Nursing Home, Inc. is granted, without opposition, on the fifth cause of action only, to foreclose on a mechanic's lien in the sum of \$29,805, entered in the Office of the County Clerk, New York County, on June 10, 2022, and extended on June 8, 2023, against real property

located at 116 East 125th Street, New York, New York 10035 (Block 01773, Lot 0007); and it is further

ORDERED that plaintiff shall settle order, which shall include a proposed judgment of foreclosure and sale and order of reference, on notice within 60 days of the date of this decision and order.

7/25/2025
DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input checked="" type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE