Oceanlink USA Inc. v 11 Weirfield, LLC
2025 NY Slip Op 33940(U)
October 10, 2025
Supreme Court, Kings County
Docket Number: Index No. 502551/2023
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10th day of October, 2025.

P R E S E N T :

HON. WAVNY TOUSSAINT,

Justice.

---X

OCEANLINK USA, INC.,

Plaintiff,

-against –

11 WEIRFIELD, LLC and
CENTURY BUILDERS MANAGEMENT,

Defendants.

---X

Index No.: 502551/2023

ORDER

The following papers numbered 1 to read herein	Papers Numbered
Notice of Motion/Order to Show Cause/ and Affidavits (Affirmations) Annexed	6-14
Cross Motion and Affidavits (Affirmation) Annexed	
Answers/Opposing Affidavits (Affirmations)	15-16
Reply Affidavits (Affirmations)	19
Affidavit (Affirmation)	
Other Papers	

Upon the foregoing papers, in this action to foreclose a mechanic's lien, defendant 11 Weirfield LLC ("defendant") moves (Seq. 01) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing plaintiff Oceanlink USA, Inc.'s ("plaintiff") Fifth Cause of Action to foreclose on the subject mechanic's lien. Defendant also seeks an order directing the Kings County Clerk to vacate and cancel of record the mechanic's lien and

the associated lien discharge bond issued by Great American Insurance Company. Plaintiff opposes the motion.

Background

Defendant is the owner and developer of the property located at 11 Weirfield Street, Brooklyn, New York (the "premises"). Defendant entered into a contract with non-party E&M Builders Group Corp. ("E&M"), as general contractor, to construct a new mixed-use building on the premises (the "project"). E&M entered into a subcontract with defendant Century Builders Management ("CBM") to provide certain services to the project. CBM, in turn, hired plaintiff as the subcontractor to provide concrete rental forms, building supplies, and other labor for the project.

The project was completed in late 2022. On January 13, 2023, plaintiff filed a mechanic's lien against the premises, asserting it was owed $59,392.42, the alleged unpaid agreed upon price and value of the labor performed and material furnished in connection with the project (the "lien"). The lien recited the first date of work performed, and material furnished, as August 3, 2022, and the last date as November 1, 2022. On January 25, 2023, plaintiff commenced this action to foreclose the lien, among other claims, asserting no portion of the $59,392.42 allegedly due, had been paid by defendant or CBM.

The Parties' Contentions

Defendant argues that the claims against it must be dismissed because CBM, the party that hired plaintiff, had been paid in full at the time the lien was filed. As proof of payment to CBM, defendant submits the payment ledger (NYSCEF Doc. No. 12) and six lien waivers for the period September 30, 2022 through December 22, 2022 (coinciding

with plaintiff's work dates of August 3, 2022 through November 1, 2022) (NYSCEF Doc. No. 13).

In opposition, plaintiff contends defendant does not support its claim of full payment as no backup documentation is provided to substantiate the amounts stated in the payment ledger. Also, plaintiff contends the six lien waivers are unnotarized and, in any event, fall short of the full contract price of $1,300,000, as stated in the Subcontractor Agreement between E&M and CBM, executed on January 17, 2022 (NYSCEF Doc. No. 10; the "Subcontractor Agreement"). Plaintiff further contends that additional discovery is needed to determine any balance paid and/or due to CBM, in relation to the lien fund.

In reply, defendant argues plaintiff has conflated the lien fund amount (the sum owed for work already performed; here, whether CBM was paid in full) with the contract balance (the sum to be paid for work not yet performed; here the full contract price of $1,300,000). Accordingly, defendant asserts that the documentary evidence shows that CBM, the subcontractor which hired plaintiff, was paid in full at the time plaintiff filed the lien on January 13, 2023; and that therefore, the lien must be discharged and cancelled.

Discussion

The Standard of Proof

It is well settled that summary judgment is a drastic remedy (*Sillman v. Twentieth Century-Fox Film Corporation,* 3 NY2d 395, 404 [1957]; *see also Murray v Community House development Fund Company, Inc.*, 223 AD3d 675, 677 [2d Dept 2024]), which should not be granted if there is any doubt as to the existence of a triable issue of fact (*Rotuba Extruders, Inc. v. Ceppos*, 46 NY2d 223, 231 [1978]). Hence, the court's function

in determining such a motion, is issue finding, not issue determination. (*Sillman*, 3 NY2d at 404; *see also Khutoryanskaya v Laser & Microsurgery, P.C.*, 222 AD3d 633, 635 [2d Dept 2023]).

To prevail, the movant must establish entitlement to judgment as a matter of law, by submitting admissible evidentiary proof (*Friends of Animals, Inc. v. Associate Fur Manufacturers, Inc.*, 46 NY2d 1065, 1067 [1979]). Absent such a showing, the motion must be denied regardless of the sufficiency of opposing papers (*Gambarian v Spivakov*, 2025 WL 2714294, *1 [2d Dept 2025], *citing Winegrad v. New York University Medical Center*, 64 NY2d 851, 853[1985])

The Applicable Lien Law

"Lien Law § 3 provides that a contractor who performs labor or furnishes materials for the improvement of real property with the consent, or at the request of, the owner 'shall have a lien for the principal and interest, of the value, or the agreed price, of such labor . . . or materials upon the real property improved or to be improved and upon such improvement . . . [t]he lienor must establish the amount of the outstanding debt by submitting proof of either the price of its contract or the value of the labor and materials supplied' " (*DHE Homes, Ltd. v. Jamnik*, 121 AD3d 744, 745 [2d Dept 2014] *citing Peri Formwork Sys., Inc. V Lumbermens Mut. Cas. Co.*, 112 AD3d 171, 175 [2d Dept 2013]). The amount of the lien is limited by the contract under which it is claimed, and ordinarily a lienor is bound by the price term contained in the contract to which it is a party (*Peri Formwork Sys., Inc.*, 112 AD3d at 175).

It is well settled that a materialman's or subcontractor's lien is derivative in the sense that it is derived from what is owed to the general contractor (*Timothy Coffey Nursery/Landscape, Inc. v Gatz*, 304 AD2d 652, 653 [2d Dept 2003] [citations omitted]). Commensurate with the foregoing rule, "[a] subcontractor is allowed to claim to the extent of his or her debt . . ." (*Peri Formwork Sys., Inc.*, 112 AD3d at 175; *see also* Mechanic's Lien Law § 24). Further, a "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 . . . . [thus], if the general contractor is not owed any amount under its contract with the owner, then the subcontractor may not recover" (*Peri Formwork Sys., Inc.*, 112 AD3d at 176).

Under the principal of subrogation, "in the case of a sub-subcontractor or a materialman to a subcontractor, it 'may not enforce its lien for an amount in excess of either (1) the amount of money owed to him by the subcontractor; (2) the amount of money owed by the general contractor to the subcontractor; or (3) the amount of money owed by the owner to the general contractor' " (*id.* at 177). In other words, "[T]he principle of subrogation applies to all tiers of subcontractor liens" (*id.* at 176–177). "Each party is subrogated to the rights of the contractor or subcontractor on the contracting tier above him" (*id.* at 177; *see also NGU v City of New York*, 189 AD3d 850, 852 [2d Dept 2020]). Here, if CBM was not owed any money under the contract with E&M at the time the lien was filed, then plaintiff, as subcontractor, cannot recover on its lien (*Timothy Coffey Nursey/Landscape*, Inc., 304 AD2d at 653-654).

Defendant's Motion Seq. 01

In support of its motion, defendant submitted, *inter alia*, the last six lien waivers between E&M and CBM; the affirmation of Elad Ben-Kimon, its member ("Mr. Ben-Kimon"); the Subcontractor Agreement; plaintiff's mechanic's lien; and its payment ledger. The affirmation of Mr. Ben-Kimon, who cites to the payment ledger, sets forth the conclusory assertion that "CBM had been paid in full for all work performed by Oceanlink [plaintiff] as of its last date of work" (NYSCEF Doc. No. 8, at par.16; see also NYSCEF Doc. No. 7, at p.5). However, the payment ledger is inadmissible, as defendant's motion was unsupported by an affidavit from an individual with personal knowledge as to the care and maintenance of the payment ledger (*Bank of New York Mellon v Demasco*, 226 AD3d 495, 497-498 [2d Dept 2024]; *JP Morgan Chase Bank, N.A. v Rads Group, Inc.*, 88 AD3d 766, 767 [2d Dept 2011]) and neither were the underlying records produced themselves (CPLR 4518[a]; *SK Industries, LLC v Jackson*, 198 AD3d 830, 832 [2d Dept 2021]).

Here, defendant does not satisfy the evidentiary requirements of CPLR § 4518, absent information regarding who or by whom the ledger was created or maintained, or whether the data in the ledger was recorded contemporaneously or soon after each purported payment. As defendant must prove its defense in admissible form, the failure to establish the evidentiary foundation of the payment ledger, which forms the essence of its argument, warrants denial of its motion.

Aside from its inadmissibility, the payment ledger is not supported by documentation in the form of cancelled checks or other financial information (*SMI Building Systems, LLC v West 4th Street Development Group, LLC*, 83 AD3d 687, 688 [2d

Dept 2011], *citing Perma Pave Contr. Corp. v Paerdgat Boat & Racquet Club*, 156 AD2d 550, 552 [2d Dept 1989]). Accordingly, there is no basis to conclude whether the amounts stated in the payment ledger, in fact, were paid by E&M and the checks received and negotiated by CBM. While a single check of $82,262 is presented apparently in correlation to the lien waiver dated October 19, 2022, though no evidence it was cashed is produced, defendant does not give any further context for the check or clarify its relation to the other five lien waivers, especially when the six lien waivers total $327,185 in the aggregate.

Accordingly, the Court has no basis to determine whether CBM had been paid at the time the lien was filed. Moreover, the bankruptcy petition filed by CBM on June 2, 2023 (NYSCEF Doc. No. 5), some four months after the commencement of this action, certainly raises the specter of whether CBM made payments to its subcontractors, including plaintiff. The Court also notes that in support of the motion, defendant does not submit an affidavit or affirmation from any member of CBM who could independently establish it had been paid at the time the lien was filed, an omission which also is fatal to defendant's motion.

For all the foregoing reasons, defendant has not made a *prima facie* showing entitling it to summary judgment. Defendant failed to prove that all amounts, due and owed to it, had been fully paid at the time the lien was filed. Having failed to carry its burden, the Court need not consider the sufficiency of plaintiff's opposition papers (*Winegrand, 64 NY2d* at 853).

Conclusion

Accordingly, it is hereby

ORDERED, that defendant 11 Weirfield LLC's motion (Seq. 01) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing plaintiff Oceanlink USA, Inc.'s Fifth Cause of Action to foreclose on the subject mechanic's lien, is denied in every respect.

This constitutes the decision and order of the Court.

E N T E R

J.S.C.

HON. WAVNY TOUSSAINT
J. S. C.