

DMA Contr. Inc. v Chou

2025 NY Slip Op 34277(U)

November 5, 2025

Supreme Court, Kings County

Docket Number: Index No. 516036/2025

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 5th day of November 2025.

PRESENT:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
DMA CONTRACTING INC.,

Plaintiff,

-against-

BEN CHOU, as Guardian for WILLIAM CHOU
and SURETEC INSURANCE COMPANY,

Defendants.
-----X

Index No. 516036/2025

Cal. No. 9 MS 1

Decision and Order

The following e-filed papers read herein:
MS 1

NYSCEF Doc Nos.
7-26, 30-31

Defendants Ben Chou, as guardian for William Chou and Suretec Insurance Company
("collectively, Defendants") have interposed a motion (motion sequence 1) for an order:

- (i) Directing the County Clerk of the County of Kings, pursuant to Lien Law § 11, to cancel, vacate and discharge of record plaintiff DMA Contracting Inc.'s ("Plaintiff") Notice of Mechanic's Lien filed on May 17, 2024, in the amount of \$1,213,893.11 against the premises known as 816 58th Street, County of Kings, City of Brooklyn, Block: 5700, Lot: 12 (the "Mechanic's Lien") on the basis that Plaintiff's Mechanic's Lien was improperly served at the wrong address in violation of Lien Law § 11;
- (ii) Releasing and discharging the bond issued by defendant Suretec Insurance Company ("Defendant Suretec"), under Bond No. 3526593, which was filed with the Kings County Clerk's Office to release Plaintiff's Mechanic's Lien;

- (iii) Dismissing Plaintiff's Fourth Cause of Action in the complaint against all defendants pursuant to CPLR 3211 (a) and Lien Law § 11; and
- (iv) Dismissing the complaint against Defendant Suretec pursuant to CPLR 3211 (a) and Lien Law § 11.

(NYSCEF Doc No. 7, notice of motion, ¶¶ [i]-[v]).

Defendant Ben Chou ("Defendant Chou") was appointed as legal guardian of the person and property of his brother, defendant William Chou ("Defendant William Chou"), on April 20, 2023 after the latter allegedly sustained a stroke (*see* NYSCEF Doc No. 9, Defendant Chou aff, ¶ 1). Defendant Chou posted a \$750,000 bond as required by the court (*id.*). Defendant William Chou is the sole managing member of non-party Koban Properties LLC ("Koban") against which Plaintiff served the lien which forms a portion of the basis of the instant proceeding (*id.* ¶ 3).

However, Defendants claim that Plaintiff served the lien at the wrong address in violation of Lien Law § 11 by failing to serve the lien on Defendant William Chou's last known address and Koban's address (*see* NYSCEF Doc No. 11, mechanic's lien). Defendants posit that they are entitled to the relief sought in the instant motion (namely, an order, inter alia, discharging Plaintiff's Mechanic's Lien) since Plaintiff allegedly failed to satisfy the statutory requirements established under Lien Law § 11 by failing to serve its Mechanic's Lien on the property owner's last known place of business, instead serving its Mechanic's Lien on the vacant unfinished construction site (*see* NYSCEF Doc No. 9, Defendant Chou aff, ¶ 5). Defendants assert that they are all the more entitled to the relief sought in their motion in that Plaintiff knew, before serving its Mechanic's Lien, that Koban's last known place of business was located at 585 84th Street, Brooklyn, New York 11209, where Defendant William Chou lived, not 816 58th Street, Brooklyn, New York 11220, where the unfinished construction site was located (*id.* ¶ 6).

The instant proceeding arises from the following circumstances. Non-party Koban owned a property located at 816 58th Street, Brooklyn, New York 11220 (the “Property”) (*id.* ¶ 10). Koban and Defendant William Chou hired Plaintiff as the general contractor to construct a new building in February of 2020, pursuant to a master construction contract between Plaintiff and Defendant William Chou as well as an AIA A101-2017 contract between Plaintiff and Koban (collectively, the “Contracts” or the “Construction Contracts”) (*see* NYSCEF Doc Nos. 14 and 15, respectively). Defendants contend that at the time Plaintiff entered into the Construction Contracts in February 2020, Plaintiff knew that Koban’s last known place of business, as well as Defendant William Chou’s address, the sole managing member of Koban, was 585 84th Street, Brooklyn, New York 11209 since that address is set forth on the first page of the master construction contract (*see* NYSCEF Doc No. 14, p. 1) as well as on the first page of the AIA A101-2017 contract (*see* NYSCEF Doc No. 15, p. 1).

Further, Defendants aver that before filing and serving its Mechanic’s Lien in the present action, Plaintiff filed a prior action against Koban and Defendant William Chou on December 8, 2023 in Kings County Supreme Court, under Index No. 535939/2023 (the “Prior Action”), in which Prior Action Plaintiff identified both Koban and Defendant William Chou’s address as 585 84th Street, Brooklyn, New York 11209 (*see* NYSCEF Doc No. 16, summons and complaint). Hence, Defendants conclude that before filing and serving its Mechanic’s Lien and the present action, Plaintiff knew that Koban and Defendant William Chou’s address was 585 84th Street, Brooklyn, New York 11209, as distinguished from the address of the construction site property located at 816 58th Street, Brooklyn, New York 11220 (*see* NYSCEF Doc No. 9, Defendant Chou *aff.*, ¶ 15).

Defendants opine that Plaintiff intentionally served the Mechanic's Lien on the wrong address to ensure that Defendants would not learn of the existence of the Mechanic's Lien until it was ultimately uncovered by the title company of the purchaser just prior to closing on the sale of Koban's property, leaving Koban with no alternative but to purchase the lien discharge bond to proceed with the closing (*id.* ¶ 19). Significantly, in its affirmation, Plaintiff does not deny that it served its Mechanic's Lien on the wrong address (*see* NYSCEF Doc No. 30, Rabinowitz aff, ¶¶ 2-3).

Pursuant to Lien Law § 11, if, as in the present case, a lien is not served on the owner's last known place of business, the court has no discretion to relieve the lienor's failure to comply with Lien Law § 11 and must discharge the lien on account of improper service. Lien Law 11 expressly provides as follows as to the requirement that a lien be served on the owner's last known place of business:

Within five days before or thirty days after filing the notice of lien, the lienor shall serve a copy of such notice upon the owner, if a natural person, (a) by delivering the same to him personally, or if the owner cannot be found, to his agent or attorney, or (b) by leaving it at his last known place of residence in the city or town in which the real property or some part thereof is situated, with a person of suitable age and discretion . . . if the owner be a corporation, said service shall be made (i) by delivering such copy to and leaving the same with the president, vice-president, secretary or clerk to the corporation, the cashier, treasurer or a director or managing agent thereof, personally, within the state, or (ii) if such officer cannot be found within the state by affixing a copy thereof conspicuously on such property between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, or (iii) by registered or certified mail addressed to its last known place of business. Failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien.

(Lien Law § 11 [emphasis added]).

In sum, Plaintiff's Mechanic's Lien should be vacated, canceled and discharged since Plaintiff failed to adhere with the statutory requirement set forth in Lien Law § 11 in that Plaintiff failed to serve the Mechanic's Lien upon the owner at the owner's last known place of business. As the Appellate Division, Second Department underscored its strict construction of the Lien Law § 11 service requirement pertaining to mechanic's liens:

[P]laintiff's affidavit of service of the mechanic's lien demonstrates that the plaintiff failed to serve the notice of the mechanic's lien in compliance with Lien Law § 11, as the notice was not sent to the defendants' last known place of residence. As strict compliance with the statutory requirements is mandated and the courts do not have discretion to excuse noncompliance (see *Matter of HMB Acquisition Corp. v F&K Supply*, 209 AD2d 412 [1994]; 146 W. 45th St. Corp. v McNally, 188 AD2d 410 [1992]), the Supreme Court should have granted that branch of the defendants' motion which was pursuant to Lien Law § 11 to dismiss the sixth cause of action, which was to foreclose a mechanic's lien.

(*Thompson Bros. Pile Corp. v Rosenblum*, 121 AD3d 672, 674 [2d Dept 2014]).

Further weighing in favor of granting Defendants' motion to discharge Plaintiff's Mechanic's Lien, copious documentation, including the above-referenced court filings generated by Plaintiff against Koban and Defendant William Chou, establish Plaintiff's knowledge, prior to Plaintiff's filing and service of its Mechanic's Lien, and the present action, on May 17, 2024, that both Koban and Defendant William Chou's address was 585 84th Street, Brooklyn, New York 11209.

In short, insofar as Plaintiff served its Mechanic's Lien on an erroneous address, Plaintiff failed to adhere with the requirements of Lien Law § 11, and, as such, Plaintiff's Mechanic's Lien should be discharged, vacated and canceled. As held by the Appellate Division, Second Department in granting an application to discharge a mechanic's lien:

[T]he appellant failed to demonstrate that it complied with the requirements of Lien Law § 11, since its affidavit of service of the

notice of the mechanic's lien did not demonstrate that the notice was sent to the last known place of business of the petitioner EK Mt Kisco, LLC (*see e.g. Thompson Bros. Pile Corp. v Rosenblum*, 121 AD3d 672, 674 [2014]).

Accordingly, the Supreme Court properly granted the petition to discharge the lien.

(*Matter of EK Mt Kisco, LLC v Arcon Constr. Group, Inc.*, 138 AD3d 1118, 1119 [2d Dept 2016]).

Inasmuch as Plaintiff's Mechanic's Lien should be discharged, the bond issued by Defendant Suretec to release Plaintiff's Mechanic's Lien, under bond number 3526593, should likewise be discharged as the need for a bond has been rendered moot. Similarly, since Plaintiff is not entitled to maintain its Mechanic's Lien, which was not properly served under Lien Law § 11, Defendants are entitled to a dismissal of Plaintiff's fourth cause of action (namely, Plaintiff's cause of action to foreclose its Mechanic's Lien against the mechanic's lien discharge bond and Defendant Suretec, the surety that issued the bond) (*see Thompson Bros. Pile Corp. v Rosenblum*, 121 AD3d 672, 674 [2d Dept 2014] [the Appellate Division, Second Department held that the Supreme Court should have granted a dismissal of the cause of action to foreclose a mechanic's lien pursuant to Lien Law § 11 due to the lienor's failure to comply with the statutory service requirement under Lien Law § 11]). Hence, the present motion should be granted in its entirety, which relief is buttressed by Plaintiff's affirmation dated October 9, 2025 in which Plaintiff indicates that it does not oppose the relief sought by Defendants in the instant motion (*see* NYSCEF Doc No. 30, Rabinowitz aff, ¶¶ 2-3).

Based on the foregoing, the motion interposed by Defendants (motion sequence 1) seeking the relief set forth below is hereby granted:

- (i) Directing the County Clerk of the County of Kings, pursuant to Lien Law § 11, to cancel, vacate and discharge of record Plaintiff's Notice of Mechanic's Lien filed on May 17, 2024, in the amount of \$1,213,893.11 against the premises known as 816 58th Street, County of Kings, City of

Brooklyn, Block: 5700, Lot: 12 since Plaintiff's Mechanic's Lien was improperly served at the wrong address in violation of Lien Law § 11;

- (ii) Releasing and discharging the bond issued by Defendant Suretec, under Bond No. 3526593, which was filed with the Kings County Clerk's Office to release Plaintiff's Mechanic's Lien;
- (iii) Dismissing Plaintiff's Fourth Cause of Action in the complaint against defendants pursuant to CPLR 3211 (a) and Lien Law § 11; and
- (iv) Dismissing the complaint against Defendant Suretec pursuant to CPLR 3211 (a) and Lien Law § 11.

Any relief not expressly addressed herein has been considered and is denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.