

Redline Constr. & Maintenance LLC v Prior

2025 NY Slip Op 34345(U)

November 6, 2025

Supreme Court, Kings County

Docket Number: Index No. 531856/21

Judge: Heela D. Capell

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 19 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 6 day of November, 2025.

P R E S E N T:

HON. HEELA D. CAPELL,
Justice.

-----X
REDLINE CONSTRUCTION & MAINTENANCE LLC,

Plaintiff,

-against-

Index No. 531856/21
Motion Sequence No. 2, 3, 5

SARA PRIOR and CRAIG ROBERTS,
and "JOHN DOE 1" through "JOHN DOE 5," said parties
being lienors who have yet to perfect their liens
and being
fictitious
and unknown to Plaintiff,

DECISION AND ORDER

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Cross-Motion, Order to Show Cause,
Affirmations, and Exhibits Annexed _____
Affirmations in Opposition and Exhibits Annexed _____

33-42;
43-48, 51; 67-83
49; 84 _____

Defendants Sara Prior and Craig Roberts (collectively, "Defendants"), pursuant to a written contract,¹ hired plaintiff Redline Construction & Maintenance LLC ("Plaintiff") to renovate a Park Slope brownstone which they used as their personal residence ("the brownstone"). They paid Plaintiff a total of \$603,884.06 on account as the work progressed but refused further payment of \$101,928.66, claiming that Plaintiff had breached the

¹ AIA Document A105-2017, Standard Short Form Agreement Between Defendants and Plaintiff, dated April 26, 2019 (NYSCEF Doc No. 37). The contract, in the course of its performance, was modified by a series of Change Orders, totaling 54 by count (NYSCEF Doc Nos. 39 and 73).

agreement.² Plaintiff thereupon instituted this action to recover the unpaid balance of \$101,928.66 under the theories of breach of contract, quantum meruit, account stated, and unjust enrichment, as well as to foreclose on the mechanic's lien it had filed encumbering the brownstone.³ Plaintiff concurrently filed a Notice of Mechanic's Lien (which it previously had filed against the brownstone on January 19, 2021) and a Notice of Pendency (which was dated and e-filed on December 15, 2021).⁴ Defendants counterclaimed for damages of at least \$53,235.13 arising from Plaintiff's allegedly faulty work.⁵

After discovery was completed and a note of issue was filed, the following motion, cross-motion, and order to show have been consolidated for disposition purposes:

In Motion Sequence No. 2, Defendants move for summary judgment dismissing all claims against them, vacating the Notice of Pendency, and discharging the Mechanic's Lien;

In Motion Sequence No. 5, Plaintiff cross-moves for leave, pursuant to CPLR 3025 (b), to amend its complaint to plead, as required by CPLR 3015 (e),⁶ that, during the relevant time period, it possessed a valid Home Improvement Contractor

² Invoice No. 11, dated July 16, 2020 (NYSCEF Doc No. 74).

³ Verified Complaint, dated November 17, 2021, First, Second, Third, Fourth, and Fifth Causes of Action, respectively (NYSCEF Doc No. 2, e-filed on December 14, 2021).

⁴ Notice of Mechanic's Lien and Notice of Pendency (NYSCEF Doc Nos. 3 and 4, respectively).

⁵ Verified Answer with Counterclaim, dated February 15, 2022, First Counterclaim (NYSCEF Doc No. 7). Plaintiff interposed a Verified Reply to Counterclaim, dated March 1, 2022 (NYSCEF Doc No. 8).

⁶ CPLR 3015 (e) provides, in relevant part, that "[w]here the plaintiff's cause of action against a consumer arises from the plaintiff's conduct of a business which is required by state or local law to be licensed by the department of consumer affairs of the city of New York . . . , the complaint shall allege, as part of the cause of action, that plaintiff was duly licensed at the time of services rendered and shall contain the name and number, if any, of such license and the governmental agency which issued such license."

License (HIC license) issued by the New York City Department of Consumer and Worker Protection;⁷ and

In Motion Sequence No. 3, Plaintiff moves, by order to show cause, dated December 23, 2024, for an extension of the Notice of Pendency for a period of three years, nunc pro tunc to December 15, 2024.⁸

Defendants' Request for Summary Judgment

“Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it ‘should only be employed when there is no doubt as to the absence of triable issues’” (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005] [quoting *Andre v Pomeroy*, 35 NY2d 361, 364 [1974])). “‘[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact’” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010] [quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986])). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible from sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers, Inc. v Oppenheimer*, 148 AD2d 493, 494 [2d Dept 1989])).

⁷ NYC Consumer and Worker Protection, Certification of Licensure, dated February 14, 2024 (NYCEF Doc No. 69). In that regard, Administrative Code § 20-387 (a) provides that “[n]o person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor from an owner without a license therefor.”

⁸ The Order to Show Cause included (at page 2) a court-initialed interim extension of the Notice of Pendency “pending the hearing” thereon (NYSCEF Doc No. 51).

Here, the record viewed in a light most favorable to Plaintiff as non-movant is replete with triable issues of material fact as to:

(1) Whether all, some, or none of the unsigned Change Orders numbered 1 through 54 were approved and authorized by Defendants either explicitly or implicitly;

(2) Whether the work progress was delayed and, if so, whether the work-progress delays were attributable (in whole or in part) to Plaintiff and, if so, whether such delays were excusable (in whole or in part) under the contract terms;

(3) Whether Defendants consulted with their own architect,⁹ in accordance with the contract, before issuing their notice of termination to Plaintiff; and

(4) Whether Defendants' notice of termination "for cause" complied with the terms of the contract (*see e.g. Berardini v Blossom Nails Too Corp.*, 241 AD3d 1252, 1253 [2d Dept 2025]; *99 Wall Dev., Inc. v Consigli & Assoc., LLC*, 238 AD3d 502, 503 [1st Dept 2025]; *Hudson Meridian Constr. Group LLC v Bayport Constr. Corp.*, 228 AD3d 531, 533 [1st Dept 2024]).

Plaintiff's Request for Leave to Amend Its Complaint

Pursuant to CPLR 3025 (b), "[a] party may amend his or her pleading . . . at any time by leave of court. . . . Leave shall be freely given upon such terms as may be just. . . ." "Thus, leave to amend a pleading should be granted where the amendment is neither palpably insufficient nor patently devoid of merit, and the delay in seeking amendment

⁹ AIA Document B104-2017, Standard Abbreviated Form of Agreement Between defendant Sara Prior and nonparty architect Urban Pioneering Architecture, DPC, dated September 14, 2018 (NYSCEF Doc No. 72).

does not prejudice or surprise the opposing party” (*DLJ Mtge. Cap., Inc. v David*, 147 AD3d 1024, 1025 [2d Dept 2017]).

Here, leave to amend the complaint to plead, as required by CPLR 3015 (e), that Plaintiff possessed a valid HIC license during the relevant time period is granted. Plaintiff’s HIC license reflects that it was a licensed home-improvement contractor from August 4, 2010 to February 28, 2023, including the period at issue covered by the parties’ contract.¹⁰ Defendants failed to demonstrate that they would be prejudiced by the proposed amendment, particularly since the amendment does not change the fundamental nature of the allegations in the complaint, and the delay was not inordinate (*see Pepe v Tannenbaum*, 262 AD2d 381, 382 [2d Dept 1999]; *see also Vatco Contr., Ltd. v Kirschenbaum*, 73 AD3d 1163, 1164 [2d Dept 2010]).

Plaintiff’s Order to Show Cause for Extension of Notice of Pendency;
Defendants’ Request to Cancel Notice of Pendency and to Discharge Mechanic’s Lien

“Pursuant to CPLR 6513, a ‘notice of pendency is valid for three years from the date of filing and may be extended for additional three-year periods upon a showing of good cause. The extension, however, must be requested prior to the expiration of the prior notice. This is an exacting rule; a notice of pendency that has expired without extension is a nullity’” (*Ampul Elec., Inc. v Vil. of Port Chester*, 96 AD3d 790, 791 [2d Dept 2012] [quoting *Matter of Sakow*, 97 NY2d 436, 442 [2002] [citation and internal quotation marks omitted]). “A lapsed notice of pendency may not be revived” (*Ampul Elec., Inc.*, 96 AD3d

¹⁰ As noted, *see* NYC Consumer and Worker Protection, Certification of Licensure, dated February 14, 2024 (NYCEF Doc No. 69).

at 791). Because Plaintiff failed to move to extend the Notice of Pendency *before* its expiration on December 15, 2024, Plaintiff's Order to Show Cause must be denied, whereas the branch of Defendants' summary judgment motion which was for cancellation of Notice of Pendency must be granted (*see Thompson Bros. Pile Corp. v Rosenblum*, 134 AD3d 1020, 1022 [2d Dept 2015]; *Ampul Elec., Inc.*, 96 AD3d at 791).¹¹

Furthermore, the expiration of Plaintiff's Notice of Pendency is fatal to the continued validity of its Mechanic's Lien. Whereas the Mechanic's Lien filed by Plaintiff on January 19, 2021 was extended by its filing of the Notice of Pendency and its commencement of this action on December 15, 2021, the Mechanic's Lien expired together with the Notice of Pendency on December 15, 2024 (*see Thompson Bros. Pile Corp.*, 134 AD3d at 1022).¹² Stated otherwise, because a further extension of the Mechanic's Lien was not obtained before its expiration (by way of extension of the underlying Notice of Pendency), the Mechanic's Lien automatically expired by operation of law, becoming a nullity and requiring its discharge (*see Aztec Window & Door Mfg.*, 60 AD3d at 796).

¹¹ *Compare RKO Props., Ltd. v Boymelgreen*, 31 AD3d 625, 626 (2d Dept 2006) ("The plaintiff filed a notice of pendency in this action on November 15, 2002. By order to show cause dated November 9, 2005, the plaintiff moved to extend the notice of pendency. The order to show cause provided that the notice of pendency would be extended pending the hearing and determination of the plaintiff's motion and required that the order be filed, recorded, and indexed prior to the expiration period in the office of the Clerk of the County of Queens. The order to show cause also provided that service of the order had to be made by overnight carrier on or before November 15, 2005. . . . The plaintiff filed, recorded, and indexed the order to show cause with the Clerk of Queens County on November 14, 2005 and served the defendants by overnight carrier on November 15, 2005. Accordingly, . . . the plaintiff met the requirements of the order to show cause prior to the expiration of the existing notice of pendency.").

¹² "Pursuant to Lien Law § 17, a mechanic's lien expires one year after filing unless an extension is filed with the County Clerk or an action is commenced to foreclose the lien within that time and a notice of pendency is filed in connection therewith" (*Aztec Window & Door Mfg., Inc. v 71 Vil. Rd., LLC*, 60 AD3d 795, 796 [2d Dept 2009]). However, "[a] lien, the duration of which has been extended by the filing of a notice of the pendency of an action . . . , shall nevertheless terminate as a lien after such notice has . . . ceased to be effective as constructive notice as provided in [CPLR 6513]" (Lien Law § 17).

The Court has considered the parties' remaining contentions and found them either moot or unavailing in light of its determination. All relief not expressly granted herein is denied.

Accordingly, it is

ORDERED that, in Motion Sequence No. 2, Defendants' motion is granted to the extent that the Notice of Pendency and Mechanic's Lien of Plaintiff Redline Construction & Maintenance LLC, as recorded against the subject property located at 247 Sixth Avenue, Brooklyn NY 11215 (Block 963, Lot 11), are both hereby canceled and discharged. The remainder of Defendants' motion is denied, and it is further

ORDERED that, in Motion Sequence No. 5, Plaintiff's cross-motion for leave to amend its complaint is granted, and the First Amended Verified Complaint, dated June 2025, in the form annexed to its cross-motion as Exhibit 9 under NYSCEF Doc No. 79, is deemed served on Defendants, and Defendants are directed to answer the First Amended Verified Complaint within twenty days after electronic service of this decision and order with notice of entry by Plaintiff's counsel on Defendants' counsel; and it is further

ORDERED that, in Motion Sequence No. 3, Plaintiff's Order to Show Cause, dated December 23, 2024 (NYSCEF Doc No. 51), is denied in its entirety, and the TRO for an interim extension of the Notice of Pendency is vacated.

This constitutes the decision and order of the court.

ENTER,

