

Falcon Pac. Bldrs., LLC v OnBoard Hospitality LLC

2025 NY Slip Op 34688(U)

December 5, 2025

Supreme Court, New York County

Docket Number: Index No. 652461/2022

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 61M

Justice

-----X

FALCON PACIFIC BUILDERS, LLC,

Plaintiff,

- v -

INDEX NO. 652461/2022

MOTION DATE 04/24/2025

MOTION SEQ. NO. 001

ONBOARD HOSPITALITY LLC, RMV HOSPITALITY CORP.,
NEW EMPIRE BUILDER CORP., ROBERT ETTINGER
P.E., P.C., TITAN FORMWORK SYSTEMS
LLC, LIGHTSMITH, INC., NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, NEW YORK
CITY DEPARTMENT OF FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY
PARKING VIOLATIONS BUREAU, U.S. SPECIALTY
INSURANCE COMPANY, UPSIDE CONSTRUCTION,
LLC, JOHN AND JANE DOES #1 THROUGH #100,
INCLUSIVE, THE TRUE NAMES OF DEFENDANTS BEING
UNKNOWN

Defendants.

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**AMENDED
DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

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

In this breach of contract action arising from a hotel construction project in Manhattan, the plaintiff, a general contractor, seeks to foreclose on a mechanic's lien it filed on March 23, 2022, in the sum of \$1,415,499.43, and seeks damages in that amount. Defendant OnBoard Hospitality LLC (OnBoard), owner of the subject property, moves for summary judgment on its counterclaim seeking dismissal of the complaint as against it on the ground that the plaintiff willfully exaggerated its mechanics' lien by \$1,380,931.33, and seeks total damages of \$1,505,855.06, pursuant to Lien Law §§ 39 and 39-a.

It is well settled that the proponent of a motion for summary judgment is entitled to that relief upon a *prima facie* showing, by proof in admissible form, that there are no triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). Once the movant meets

this burden, it becomes incumbent upon the party opposing the motion to come forward with proof in admissible form to raise a triable issue of fact. See Alvarez v Prospect Hospital, 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Defendant OnBoard has met its burden on the motion and the plaintiff has failed to raise any triable issue of fact.

A lienor who willfully exaggerates a lien risks the court declaring the entire lien void and denying any recovery to the lienor. Lien Law § 39. “The burden of proof on a counterclaim to recover a penalty for willful exaggeration is, of course, on the party claiming it.” Goodman v Del-Sa-Co Foods, Inc., 15 NY191, 194 (1965). “A determination of willful exaggeration of a mechanic’s lien requires proof that the lienor deliberately and intentionally exaggerated the lien amount.” J. Sackaris & Sons, Inc. v Terra Firma Constr. Mgt & Gen. Contr., LLC, 14 AD3d 538, 541 (2nd Dept. 2005); see Goodman v Del-Sa-Co Foods, Inc., 15 NY2d 191 (1965). While “[t]he fact that a lien may contain improper charges” alone does not establish a willful exaggeration (Minelli Constr. Co. v Arben Corp., 1 AD3d 580, 581 [2nd Dept. 2003]; see Summit Dev. Corp. v Hudson Meridian Constr. Group LLC, 198 AD3d 553 [1st Dept. 2021]), it has been held that cost and expense mark-ups by a subcontractor (see Inter Metal Fabricators, Inc. v HRH Constr. LLC, 94 AD3d 529 [1st Dept. 2012]) or a discrepancy between the lien amount and agreed contract price may provide such proof. See LMF-RS Contr., Inc. v Kaljic, 126 AD3d 436 (1st Dept. 2015); Strongback Corp. v N.E.D. Cambridge Ave. Dev. Corp., 25 AD3d 392 (1st Dept. 2006). Further, where the evidence conclusively establishes that the amount of the lien was willfully exaggerated, summary disposition is warranted. See Casella Constr. Corp. v 232 East 93rd Street LLC, 211 AD3d 458 (1st Dept. 2022); On the Level Enterp., Inc v 49 East Houston LLC, 104 AD3d 500 (1st Dept. 2013); Northe Group, Inc. v Spread NYC, LLC, 88 AD3d 557 (1st Dept. 2011); Inter Metal Fabricators, Inc. v HRH Constr. LLC, supra; Strongback Corp. v N.E.D. Cambridge Ave. Dev. Corp., supra.

Here, defendant OnBoard has established entitlement to relief under Lien Law § 39, and discharge of the mechanic’s lien against its property as void, warranting summary disposition.

It is undisputed that the plaintiff filed a mechanic’s lien against the property on March 23, 2022, in the amount of \$1,415,499.43, and that on August 5, 2025, OnBoard obtained an insurance bond in the sum of \$1,557,049.37 to discharge the lien. It is also undisputed that on September 1, 2022, the plaintiff filed an itemized statement of lien pursuant to Lien Law § 38

stating that it is owed \$484,779.51 for Phase I and \$962,219.91 for Phase II of the project. In support of its motion, OnBoard relies upon the subject contracts, the lien documents, and the deposition testimony and affidavit of Joginder Y. Sharma, a member of OnBoard. In his affidavit, Sharma , explains that there were two Phases of the plaintiff's work on the project – Phase I covered all foundations and Phase II covered the superstructure and two contracts were signed which stated that "Guaranteed Maximum Price" for construction was \$30,868,611.00. Phase I stated the contract sum as \$804,871.00. The plaintiff started work on the project site in the spring of 2019, taking over from the previous contractor, defendant New Empire Builder Corp. and fixed certain issues arising from that contractor's foundation work, after which it entered into Phase II contract with OnBoard in September of 2019. OnBoard funded itself for Phase I but sought financing for Phase II. Sharma testified that availability of financing changed when the Covid-19 pandemic hit. At the same time, the plaintiff demanded a higher contract price, a \$6.5 million increase, and also did not have the personnel to perform the Phase II work. Ultimately, and after OnBoard obtained financing, it replaced the plaintiff with a new general contractor, Omnibuild, to complete the work, for a total of \$33 million.

According to Sharma, prior to Phase II, OnBoard had withheld some funds from the plaintiff to pay the plaintiffs' subcontractors, including Upside Construction LLC and Titan Formwork Systems LLC. However, only two unpaid invoices from the plaintiff for Phase I of the project, for \$22,469.07 and \$43,599.02, remained when the plaintiff claimed in its itemized statement that it was owed \$484,779.51. Sharma estimated that the mechanic's lien filed by the plaintiff is inflated by \$418,711.41 for the Phase I portion of the project alone. Sharma further alleges that the plaintiff performed no labor on Phase II of the project, but only worked on budgets and construction schedules, yet demanded \$962,201.91 for "furnished labor" making the lien inflated by that amount. Combining the two Phases, Sharma alleges that the lien was inflated by a total of \$1,380,931.33. Sharma further avers that OnBoard paid a premium of \$93,422.00, to purchase the mechanic's' lien bond to protect the property, for which it seeks reimbursement. An paid invoice is submitted. At his deposition, Sharma testified that as of June 2022, an internal reconciliation reflected that OnBoard had owed the plaintiff approximately \$120,000.00.

In support of its motion, OnBoard also relies upon the deposition testimony of John Lomio, plaintiffs' director of construction, formerly a project manager. Questioned extensively,

Lomio was unable to explain these discrepancies regarding Phase 1 numbers and agreed with Sharma that Falcon performed “no physical work on-site” for Phase II. Lomio agreed that the \$962,219.91 the plaintiff claimed to be owed was based on work performed by subcontracts and included \$532,595.00 for “general conditions”, *ie.* the work necessary to finish a project. Lomio agreed that the plaintiff did not finish the project. He did not know if the plaintiff paid any of its subcontractors but was aware that at least one subcontractor filed its own mechanic’s’ lien. Lomio acknowledged that construction prices changed after the start of the pandemic, that the plaintiff was renegotiating with OnBoard and that they ultimately did not come to an agreement on price and parted ways.

In opposition, the plaintiff argues that OnBoard failed to meet its prima facie burden and maintains that the lien was not deliberately or intentionally exaggerated. The plaintiff submits only a Memorandum of Law in which it relies on Lomio’s deposition testimony and the same documents submitted by OnBoard. The court finds the plaintiff’s arguments unpersuasive. Contrary to the plaintiff’s contentions, the lien was grossly exaggerated, beyond mere improper charges, and the size of that unexplained discrepancy, together with the documentary and testimonial proof submitted, demonstrates that the exaggeration was deliberate and intentional. See *Fiberglass Fabricators, Inc. v C.O. Falter Constr. Corp.*, 117 AD3d 1540 (4th Dept. 2014).

The defendant seeks damages pursuant to Lien Law § 39-a. That statute provides that a lien that is declared to be “void on account of willful exaggeration, the person filing such notice of lien shall be liable in damages to the owner of contractor” which damages shall include “the amount of any premium for a bond given to obtain a discharge of the lien” and “reasonable attorney’s fees for services in securing the discharge of the lien.” See *Strongback Corp. v N.E.D. Cambridge Ave. Dev. Corp.*, supra. Defendant OnBoard has submitted proof of payment of a bond premium in the amount of \$93,422.00 and \$31,501.73 in attorney’s fees and costs incurred in obtaining a discharge of the lien, a total of \$124,923.73. Moreover, OnBoard has submitted proof to establish that \$1,380,931.33 represents the difference between “the amount claimed to be due or to become due as stated in the notice of lien” and the “amount actually due or to become due.” Lien Law 39-a. Defendant OnBoard is entitled to that amount and the plaintiff provides no proof in admissible form to raise a triable issue or to dispute that amount.

Of the named defendants, only Upside Construction LLC and New Empire Builder Corp. have appeared. The action shall proceed as against them. No motion was made in regard to the remaining non-appearing defendants.

Accordingly, upon the foregoing papers, it is

ORDERED that the motion of defendant OnBoard Hospitality LLC for summary judgment on its counterclaim alleging willful exaggeration of a mechanic’s lien in violation of Lien Law § 39, is granted, and the complaint is dismissed as against that defendant, and it is further,


ORDERED that the Clerk is directed, upon receipt of a copy of this order with notice of entry, to vacate and cancel the mechanic’s lien filed by Falcon Pacific Builders, LLC, on March 21, 2022, against the property designated as Block 839, Lot 67, in the Borough of Manhattan, County of New York, and known as 34-36 West 38th Street, N.Y., N.Y 10018, and to record the vacatur of the lien on the lien docket, and it is further,

ORDERED that the application of defendant OnBoard Hospitality LLC for damages pursuant to Lien Law § 39-a is granted, and it is further

ORDERED that the Clerk shall enter judgment in favor of defendant OnBoard Hospitality LLC and against the plaintiff, Falcon Pacific Builders, LLC, in the sum of \$1,505,855.06, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

12/5/2025
DATE

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"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE