

Kingdom Assoc., Inc. v WBC Servs. Inc.

2026 NY Slip Op 31896(U)

April 23, 2026

Supreme Court, New York County

Docket Number: Index No. 158068/2024

Judge: Matthew V. Grieco

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

-----X

KINGDOM ASSOCIATES, INC.,
Plaintiff,

- v -

WBC SERVICES INC., BROADWAY PT 1710 LLC, JOHN
DOE NO. 1 TO JOHN DOE NO. 5

Defendants.

-----X

INDEX NO. 158068/2024
MOTION DATE 01/29/2026
MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION + CROSS-MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37,
38, 39, 40

were read on this motion to/for STRIKE PLEADINGS

Upon the foregoing documents, and for the reasons stated infra, the motion and
cross-motion are both denied.

Plaintiff, Kingdom Associates, Inc. ("Kingdom"), commenced this action in
September 2024 against defendants, Broadway PT 1710 LLC ("Broadway"), WBC
Services Inc. ("WBC"), and five John Does, for breach of contract, unjust enrichment,
quantum meruit, promissory estoppel, and to foreclose a mechanic's lien in the amount
of \$1,075,000 (NYSCEF Doc. No. 1). Plaintiff alleges that Broadway is the owner of real
property, which hired WBC to provide construction services on a project, which in turn
hired Kingdom to furnish labor and materials, which it did (id. at 3-4). Kingdom claims
that it remains unpaid on a balance of \$1,075,000, and it filed a mechanic's lien in that
amount (id. at 4-7; Doc. Nos. 2 and 8 [lien and lien notice, respectively]).

Broadway answered and asserted a counterclaim under Lien Law § 39-a for
willful exaggeration of the lien (NYSCEF Doc. No. 5). Kingdom filed a reply to the

counterclaim (NYSCEF Doc. No. 21).

WBC moved pre-answer pursuant to CPLR 3211(a)(1) and (7) to dismiss the first four causes of action as against it, arguing that Kingdom never had an agreement with it or did any work for it (NYSCEF Doc. Nos. 11-20). By order entered April 10, 2025, the Court (Arthur F. Engoron, J.) granted WBC's motion (NYSCEF Doc. No. 27). Kingdom filed a notice of appeal, and oral arguments were held before the First Department on April 21, 2026; an appellate decision has not yet been issued.

Meanwhile, Broadway brought a separate proceeding in October 2024 to summarily discharge the lien on the ground that it was invalid because Broadway never consented to Kingdom's providing any labor or materials (Ind. No. 159783/2024 [NYSCEF Doc. No. 1]). According to the petition, Broadway, as owner or property, hired non-party Silver Skyline Construction ("Skyline") as an "agent" for a demolition and construction project (*id.* at 2). Skyline hired WBC as construction manager; WBC solicited bids and proposals, but never entered into an agreement with Kingdom, and no bids or proposals were ever sent to either Skyline or Broadway (*id.* at 2-3). Kingdom cross-moved to dismiss the petition on the ground that the instant action was already pending (*id.* Doc. No. 11). By order entered April 9, 2025, the Court (Engoron, J.) granted the petition and discharged the lien as facially invalid, and denied the cross-motion (*id.* Doc. Nos. 21-22). Kingdom filed a notice of appeal, and arguments are scheduled before the First Department for May 14, 2026.

In the current action, Broadway moves pursuant to CPLR 3126 to strike Kingdom's reply to the counterclaim and for default judgment against Kingdom on the counterclaim, or in the alternative to preclude Kingdom from opposing the counterclaim

at trial, as a discovery sanction for failure to produce documents and appear for depositions pertinent to the counterclaim (NYSCEF Doc. Nos. 33-36).

Kingdom opposes and cross-moves for sanctions under 22 NYCRR 130-1.1 for frivolous conduct, asserting that the cancellation of the mechanic's lien on procedural grounds in the related proceeding rendered Broadway's counterclaim for willful exaggeration pursuant to Lien Law § 39-a moot (NYSCEF Doc. Nos. 37-38).

DISCUSSION

Under Lien Law § 39: "In any action or proceeding to enforce a mechanic's lien upon a private or public improvement or in which the validity of the lien is an issue, if the court shall find that a lienor has wilfully exaggerated the amount for which he claims a lien as stated in his notice of lien, his lien shall be declared to be void and no recovery shall be had thereon."

Lien Law § 39-a provides:

Where in any action or proceeding to enforce a mechanic's lien upon a private or public improvement the court shall have declared said lien to be void on account of wilful exaggeration the person filing such notice of lien shall be liable in damages to the owner or contractor. The damages which said owner or contractor shall be entitled to recover, shall include the amount of any premium for a bond given to obtain the discharge of the lien or the interest on any money deposited for the purpose of discharging the lien, reasonable attorney's fees for services in securing the discharge of the lien, and an amount equal to the difference by which the amount claimed to be due or to become due as stated in the notice of lien exceeded the amount actually due or to become due thereon.

The statute is penal in nature and must be strictly construed in favor of the party against which the penalty is sought to be imposed (*see Goodman v Del-Sa-Co Foods, Inc.*, 15 NY2d 191, 195-198 [1965]; *Joe Smith, Inc. v Otis-Charles Corp.*, 279 AD 1, 4 [4th Dept 1951], *affd* 304 NY 684 [1952]; *Wellbilt Equip. Corp. v Fireman*, ___ AD3d ___, 719 NYS2d 213, 217-218 [1st Dept 2000]).

Guided by those principles, courts have uniformly interpreted the statute as mandating that damages under Lien Law § 39-a are only available where a court in a foreclosure action declares the lien void on account of willful exaggeration; where a lien is discharged for reasons unrelated to willful exaggeration, such as on procedural grounds or on consent by stipulation, there is no longer a foreclosure action or a lien to be declared void, and thus no relief can be had under the statute (*see Joe Smith, Inc.*, 279 AD at 4, *affd* 304 NY 684; *Wellbilt Equip. Corp.*, ___ AD3d ___, 719 NYS2d at 215-218; *Thorobird Grand LLC v M. Melnick & Co., Inc.*, 233 AD3d 520, 522 [1st Dept 2024]; *Harrington v Smith*, 138 AD3d 548 [1st Dept 2016]; *High Tech Enters. & Elec. Servs. of N.Y., Inc. v Expert Elec., Inc.*, 113 AD3d 546, 548 [1st Dept 2014]; *Degraw Constr. Group, Inc. v McGowan Builders, Inc.*, 178 AD3d 770, 771-772 [2d Dept 2019]; *Atlas Refrigeration-Air Conditioning, Inc. v Lo Pinto*, 33 AD3d 639, 640 [2d Dept 2006]; *Guzman v Estate of Fluker*, 226 AD2d 676 [2d Dept 1996]; *Saratoga Assocs. Landscape Architects, Architects, Engineers and Planners, P.C. v Lauter Dev. Group.*, 77 AD3d 1219, 1223 [3d Dept 2010]; *Pyramid Champlain Co. v R.P. Brosseau & Co.*, 267 AD2d 539, 542-543 [3d Dept 1999], *lv denied* 94 NY2d 760 [2000]; *Stamatopoulos v Karasik*, 238 AD2d 688, 691 [3d Dept 1997], *lv denied* 92 NY2d 844 [1998]; *Tully Constr. Co. Inc. v United Minerals Inc.*, 221 AD2d 697, 698 [3d Dept 1995]; *Nastro Contr. Inc. v Agusta*, 217 AD2d 874, 875 [3d Dept 1995]; *Reeve Serv. Corp. v Raab*, 64 AD2d 826 [4th Dept 1978]; *see also Pamco Indus., Inc. v MPAC, Inc.*, 231 AD2d 504 [2d Dept 1996]).

Adria Infrastructure, LLC v Henick-Lane, Inc. (207 AD3d 604 [2d Dept 2022], *lv dismissed* 39 NY3d 970 [2022]), relied on by Broadway, is not to the contrary. There, a subcontractor commenced a foreclosure action on two mechanic's liens, the defendant

counterclaimed for willful exaggeration, the plaintiff then discharged the liens and moved for leave to file an amended complaint to eliminate the lien foreclosure causes of action, and the defendant moved to reinstate one of the liens at a value of \$0 to preserve its willful exaggeration counterclaim (*id.* at 605). The Second Department affirmed Supreme Court's denial of the plaintiff's motion and grant of the defendant's motion, holding that, "[p]ursuant to the Lien Law, the lien filed by the plaintiff was required to be in existence at the time of trial in order to allow the pursuit of a willful exaggeration counterclaim" (*id.* at 606). The court thus adhered to the universal rule that a Lien Law § 39-a counterclaim draws its life support from a living, breathing claim to foreclose a mechanic's lien (*see Wellbilt Equip. Corp.*, ___ AD3d ___, 719 NYS2d at 217 ["the determinative factor in assessing the viability of a willful exaggeration claim is the continued existence of the lien and the continued existence of the action to foreclose the lien"]). To be sure, the reinstatement of the lien claim over the plaintiff's objection, and the zero valuation of the lien, was a creative workaround proposed by the defendant, but it is unclear what the end result was and it does not appear to have been repeated in another case, perhaps because zero dollars does not seem like much of an exaggeration. In any event, Kingdom's lien has not been reinstated.

Also unavailing is *Wolff & Munier, Inc. v South Ferry Bldg. Co.* (52 AD2d 786 [1st Dept 1976]), which involved Lien Law § 12-(a)(1), which states:

Within sixty days after the original filing, a lienor may amend his lien upon twenty days notice to existing lienors, mortgagees and the owner, provided that no action or proceeding to enforce or cancel the mechanics' lien has been brought in the interim, where the purpose of the amendment is to reduce the amount of the lien, except the question of willful exaggeration shall survive such amendment.

The plaintiff there unilaterally reduced its lien by filing partial satisfactions prior to commencing a foreclosure action, and thereafter fully discharged it by filing two more partial satisfactions (*Wolff & Munier, Inc.*, 52 AD2d at 786). To the extent certain inferences could be drawn, the First Department subsequently ruled, in *Wellbilt Equip. Corp.* (___ AD3d ___, 719 NYS2d at 218):

even if section 12–a were interpreted as prohibiting a lienor from extricating itself from a wilful exaggeration claim by unilaterally discharging its lien (an issue we need not decide), plaintiff in this case did not act unilaterally. Rather, the lien was discharged on consent via stipulation. This is of critical significance. As previously indicated, where an owner succeeds in obtaining a discharge of a lien on procedural grounds by court order, the owner’s wilful exaggeration claim is extinguished. It follows that, where an owner succeeds in obtaining a discharge of the lien via stipulation, a wilful exaggeration claim should be similarly precluded.

Broadway obtained a discharge of the lien on procedural grounds in the separate proceeding, and thus Lien Law § 12-a is inapplicable.

Broadway argues that the First Department might reinstate Kingdom’s lien, discovery has not been stayed pending the appeals, and therefore Kingdom should still comply with Broadway’s demands for lien-related production and depositions. It would be a waste of resources to plow ahead with discovery that might be confirmed as moot, and thus Broadway’s motion for discovery penalties is denied. If the lien is indeed reinstated on appeal, then Kingdom will have to provide the requested discovery.

Broadway’s motion, however, was not frivolous within the meaning of 22 NYCRR 130-1.1(c), because it (1) was not “completely without merit in law” or could “[]not be supported by a reasonable argument for an extension, modification or reversal of existing law,” (2) was not “undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another,” and (3) did not “assert[] material

factual statements that are false.” That conclusion is only bolstered by the fact that Kingdom has not moved to discontinue its lien foreclosure claim or to dismiss the willful exaggeration counterclaim.

Accordingly, it is

ORDERED that defendant Broadway’s motion pursuant to CPLR 3126 is denied; and it is further

ORDERED that plaintiff Kingdom’s cross-motion pursuant to 22 NYCRR 130-1.1 is denied; and it is further

ORDERED that the parties are directed to appear for a status conference in Room 623, 111 Centre Street, New York, New York on July 16, 2026, at 10:00 AM.

This constitutes the decision and order of the Court.

4/23/2026

DATE

MATTHEW V. GRIECO, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE