

Majority Opinion >

SUPREME COURT OF NEW YORK, KINGS COUNTY

In the matter of the APPLICATION OF RED HOOK 160 LLC Petitioner, For an Order and Judgement Pursuant to Lien Law 38 requiring Respondent to provide a verified itemized Statement of mechanics lien, -against- BOROUGH CONSTRUCTION GROUP LLC, Respondent, Index No. 524909/18

524909/18

March 19, 2019, Decided

THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

PRESENT: HON. LEON RUCHELSMAN, JSC.

LEON RUCHELSMAN

Decision and order

The petitioner Red Hook 160 LLC has moved seeking a revised itemized statement pursuant to Lien Law §38 or a dismissal of the lien. The respondent has opposed the motion arguing that sufficient itemization of the mechanic's lien has been provided and has moved seeking to dismiss the petition. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The respondent in this case is a construction manager who was hired in connection with construction and renovation work at a six story building located at 160 Imlay Street in Kings County. The petitioner is the owner of the property and on November 20, 2018 the respondent filed a mechanic's lien in the amount of \$2,542,806.20 against the premises. The petitioner then filed a demand for itemization pursuant to Lien Law §38 . The respondent served a brief itemization which prompted the instant motion. The respondent

has supplemented that response with voluminous records which the petitioner argues is still deficient and seeks further itemization or a discharge of the lien.

Conclusions of Law

It is well settled that pursuant to Lien Law §38 when a mechanic's lien is filed an owner may make a demand seeking itemization of the labor and material and the value which comprise the amount requested in the lien. In 819 Sixth Avenue Corp., v. T. & A. Associates Inc., 24 AD2d 446 , 260 NYS2d 984 [1st Dept., 1965] the court held that "the statement served by the lienor should set forth the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of labor charges" (id). In Coughlin v. Tully, 11 Misc. 3d 1070 [A], 816 N.Y.S.2d 694 [Supreme Court Suffolk County 2006] the court noted that itemization pursuant to Lien Law §38 included "the items of skilled or unskilled labor; number of hours thereof; rate per hour; dates worked; the materials used; quantity and cost of each item of material; the terms of the contract under which the labor and material was furnished..." (Id). Thus, itemization is proper where it is necessary to provide the owner of details of the lienor's claims (Associated Bldg. Services Inc., v. Pentecostal Faith Church, 112 AD3d 1130 , 976 NYS2d 699 [3rd Dept., 2013]).

Concerning the itemization regarding the labor, the respondent has submitted hundreds of statements delineating the date, the name of the worker and the hours worked. Further, a separate document lists the rate of pay for each worker. The petitioner cites to In re Maxwell Partners, LLC v. L.G.B. Development Inc., 2006 WL 8085000 [Supreme Court New York County 2006] which held that to [*2] satisfy the itemization requirements of Lien Law §38 far more detail is required. The court is not bound by that decision of co-ordinate jurisdiction and concludes that sufficient itemization has been provided. Thus, the respondent has sufficiently itemized all labor costs.

Concerning the materials the petitioner argues that the respondent must provide "supplier purchase orders and/or invoices detailing the quantity, price and date of delivery of all materials" (see, Reply Memorandum, page 3). However, there is no authority presented requiring such extensive itemization. Thus, the respondent has provided an itemized list of all

materials which comprise the mechanic's lien. As noted in Plain Ave. Storage, LLC v. BRT Management LLC, 165 AD3d 1264 , 84 NYS3d 894 [2d Dept., 2018] the respondent is required to provide "the items and cost of labor, or the items and cost of materials" (id). The itemization provided of the materials satisfies the requirements of Lien Law §38 .

Therefore, based on the foregoing, the motion seeking a further itemization or a discharge of the lien is denied.

So ordered.

ENTER:

DATED: March 19, 2019

Brooklyn N.Y.

/s/ Hon. Leon Ruchelsman

JSC