

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8
ORDER & JUDGMENT
INDEX NO. 156265/18

361 BROADWAY ASSOCIATES HOLDINGS, LLC

MOT. DATE

- v -

MOT. SEQ. NO. 001 AND 002

BLONDER BUILDERS INC.

The following papers were read on this motion to/for VACATE MECHANIC'S LIEN (001) AND DISMISS (002)
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits

In this special proceeding, petitioner seeks an order vacating a mechanic's lien filed by respondent on June 8, 2018 pursuant to Lien Law § 19(6) because it was filed more than 8 months after the last day of work stated in the notice of lien, in direct contravention of Lien Law § 10(1). Respondent has answered the petition and moves to dismiss it. The petition and motion to dismiss are hereby consolidated for the court's consideration and disposition in this single decision/order. The court's decision follows.

Petitioner is the owner of a construction project involving the renovation and conversion of an existing building located at 361 Broadway, New York, New York, (the "Premises") into high-end luxury condominiums at the Premises (the "Project"). On October 24, 2013, Petitioner entered into a written contract with Foundations Group, Inc. ("Foundations") pursuant to which Foundations was to furnish materials and perform certain construction and related services for the Project. In turn, Foundations and respondent entered into a subcontract whereby respondent performed work on the sub-cellar, cellar, 1st floor, 8th floor and 9th floor of the Project.

Before respondent's work was completed, petitioner terminated Foundations for cause from the Project, and petitioner entered into an assignment and assumption of the subcontract. Thereafter, petitioner allegedly terminated respondent for cause "due to its failure to cure its multiple defaults in accordance with the Subcontract, including but not limited to its failure to complete its scope of work and wrongful abandonment of the Project." Petitioner denies that it owes respondent any monies.

On September 6, 2017, respondent filed a mechanic's lien in connection with the Project against Block 174, Lot 1410 of the Project. Pursuant to the 9/6/17 lien, the last day respondent performed labor at or furnished materials to the Project was July 2017. Petitioner thereafter moved for summary judgment vacating and cancelling the 9/6/17 lien pursuant to Lien § 19(5) because respondent did not work on the lot against which the First Mechanic's Lien was filed. That motion was withdrawn after Respondent released the 9/6/17 lien of record.

Dated: 11/2/18

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [X] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST
[ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

On June 8, 2018, respondent filed a new mechanic's lien against Block 174, Lots 1401, 1413 and 1414 of the Project. The top of the cover page of the 6/8/18 lien reads "CORRECTED" and other than the lot numbers and the dates of filing, the 9/6/17 mechanic's lien and 6/8/18 mechanic's lien are the same. Each is for the performance of the same work and the provision of the same materials. Each is for the same time period, which ended July 2017.

Petitioner argues that the 6/8/18 mechanic's lien is facially defective and must be vacated because it was filed more than eight months after the date of the last item of work was performed or material furnished. Meanwhile, respondent argues that the 6/8/18 lien is a corrected lien pursuant to Lien Law §10(2), which it was permitted to do regardless of the length of time that had passed since completion of its work.

## Discussion

Lien Law § 19(6) provides that a mechanic's lien may be discharged "[w]here it appears from the face of the notice of lien that ... such notice has not been filed in accordance with the provisions of section ten of this article." Lien Law § 10(1) requires that a notice of mechanic's lien be filed "within eight months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished...."

Lien Law § 10(2) states, in pertinent part:

In cases where a notice of lien shall have been filed without [a block] designation or with an erroneous designation, the county clerk, on presentation of proper proof thereof, shall enter such instrument in the proper index, under the proper block number of every block in which the land affected is situated, and shall, at the same time, make a note of such entry and of the date thereof in every place in which such instrument may have been erroneously indexed, opposite the entry thereof, and also upon the instrument itself, if the same be in his possession or produced to him for the purpose, and the filing of such instrument shall be constructive notice as to property in the block not duly designated at the time of such filing only from the time when the same shall be properly indexed.

Lien Law § 10 is clear. If the a mechanic's lien is filed more than eight months after the completion of work, it is facially defective (see i.e. *Metivier v. Sarandrea*, 154 Misc2d 355 [Sup Ct, Oneida Co 1992] aff'd 187 AD2d 963 [4th Dept]; cf *CPN Mech., Inc. v. Madison Park Owner LLC*, 94 AD3d 626 [1st Dept 2012]). Further, a corrected mechanic's lien can only provide constructive notice with respect to the corrected block and lot from the date the correction is filed.

Respondent relies upon *Bradshaw Mech. Co., Inc. v. Henick-Lane, Inc.*, 2015 N.Y. Slip Op. 31886(U) (NY Sup, NY Co), which held that a plaintiff may correct the lot and/or block number of a mechanic's lien at any time because the statute does not contain an express time limitation. That holding, however, does not require a different result here. A further issue which does not appear to have been argued before the court in *Bradshaw* is whether a corrected mechanic's lien filed outside the 8-month time-period of Lien Law § 10(1) relates back to a prior incorrect but timely filed mechanic's lien. The court cannot find any legal support for this proposition.

A fundamental rule of statutory interpretation is to give effect to the plain meaning of the words and language of the statute (*City of New York v. Stringfellow's of New York, Ltd.*, 253 AD2d 110 [1st Dept 1999]). Courts should not add words to a statute that are not there (*Myers v. Schneiderman*, 140 AD3d 51 [1st Dept 2016]). If the legislature had intended for a corrected mechanic's lien to relate back to a prior incorrect mechanic's lien, it would have expressly provided for such a provision in the statute. Absent such a provision, the petition must be granted, the motion to dismiss denied and the 6/8/18 lien vacated.

**CONCLUSION**

In accordance herewith, it is hereby

**ORDERED** that the motion to dismiss is denied; and it is further

**ORDERED and ADJUDGED** that the petition is granted; and it is further

**ORDERED and ADJUDGED** that the New York County Clerk is hereby directed to vacate, cancel and discharge of record the mechanic's lien filed by BLONDER BUILDERS INC. against Premises known and described as 361 Broadway, New York, New York, said premises being situated in Block 174, Lots 1401, 1413 and 1414, as shown on the Land and Tax Map of the County of New York, and against 361 Broadway Associates Holdings, LLC as Owner.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated:

11/2/18  
New York, New York

So Ordered:

[Signature]  
Hon. Lynn R. Kotler, J.S.C.