

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Creech v. Rufa

101 A.D.3d 1224 (N.Y. App. Div. 2012) · Decided December 6, 2012

SUMMARY

The court held that a mechanic’s lien is invalid unless the property owner or the owner’s agent affirmatively requested or consented to the lienor’s services. It affirmed summary judgment vacating the liens because the owner’s awareness, acquiescence, contract signature, and attendance at planning-board meetings did not establish affirmative consent, and it also affirmed denial of the defendants’ motion for renewal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Garry, J.; Mercure, J.P.; Lahtinen, J.; Kavanagh, J.; McCarthy, J.
JURISDICTION	New York
DECIDED	December 6, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from orders granting plaintiff's cross motion for summary judgment vacating mechanics' liens and denying defendants' motion for renewal and reargument.
STANDARD OF REVIEW	The court reviewed the propriety of summary judgment under the standard requiring the movant to establish entitlement to judgment as a matter of law and the opponent to demonstrate triable issues of fact. The denial of renewal was reviewed under CPLR 2221(e), including whether newly discovered evidence and a justifiable excuse were shown.
PRECEDENTIAL VALUE	published
PARTIES	Defendants v. Creech

TOPICS

- mechanics liens
- summary judgment
- motion for reconsideration
- real estate
- construction law

PRACTICE AREAS

real estate

construction law

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether defendants' mechanics' liens were valid when the property owner had not requested or affirmatively consented to defendants' services.
2. Whether defendants established triable issues of fact sufficient to defeat plaintiff's motion for summary judgment vacating the liens.
3. Whether defendants were entitled to renewal based on a certified subdivision-application document obtained after the summary judgment order.
4. Whether an appeal lies from the denial of a motion for reargument.

HOLDINGS

1. A mechanics' lien on real property is invalid unless the property owner or the owner's agent requested or consented to the lienor's services through some affirmative act; the owner's awareness or acquiescence alone is insufficient.
2. Summary judgment vacating the mechanics' liens was proper because plaintiff established entitlement to judgment as a matter of law and defendants failed to raise a triable issue concerning any affirmative act of consent.
3. Supreme Court properly denied defendants' motion for renewal because the certified subdivision-application document was not newly discovered evidence and defendants failed to show a justifiable excuse for not obtaining a certified copy earlier.
4. No appeal lies from the denial of a motion for reargument.

KEY QUOTATIONS

“A mechanic’s lien on real property is not valid unless the property owner or the owner’s agent requested or consented to the lienor’s services, and such consent must be shown by some affirmative act, and not merely by the owner’s acquiescence or awareness” (101 A.D.3d at 1225-1226)

“Accordingly, defendants failed to establish the existence of issues of fact as to whether plaintiff took any affirmative act indicating his consent to defendants’ work, and Supreme Court properly granted plaintiffs cross motion for summary judgment vacating the liens” (101 A.D.3d at 1226)

FACTUAL BACKGROUND

Plaintiff owned property involved in a proposed subdivision and denied requesting, hiring, approving, or consenting to defendants' professional services for the project. Although plaintiff attended some Planning Board meetings and knew that the purchase contract depended on governmental approvals, defendants could not identify any affirmative act by plaintiff requesting or consenting to their work, and their claims of consent were unsupported by documentary or other evidence.

PROCEDURAL HISTORY

Supreme Court granted plaintiff's cross motion for summary judgment, concluding that defendants' mechanics' liens were invalid because plaintiff had not requested or consented to defendants' services. Supreme Court also denied defendants' motion for renewal. The Appellate Division affirmed both orders, with costs, and noted that no appeal lies from the denial of a motion for reargument.

DISPOSITION

affirmed

CASES CITED

- Saratoga Assoc. Landscape Architects, Architects, Engrs. & Planners, P.C. v Lauter Dev. Group, 77 A.D.3d 1219 (2010)
- Tri-North Bldrs. v Di Donna, 217 A.D.2d 886 (1995)
- Care Sys. v Laramie, 155 A.D.2d 770 (1989)
- Alvarez v Prospect Hosp., 68 N.Y.2d 320 (1986)
- New York State Higher Educ. Servs. Corp. v Feher, 291 A.D.2d 736 (2002), lv dismissed and denied, 98 N.Y.2d 718 (2002)
- Huff v C.K. Sanitary Sys., 260 A.D.2d 892 (1999)
- 2 N. St. Corp. v Getty Saugerties Corp., 68 A.D.3d 1392 (2009), lv denied, 14 N.Y.3d 706 (2010)
- Johnson v Title N., Inc., 31 A.D.3d 1071 (2006)
- Greater Amsterdam School Dist. v International Fid. Ins. Co., 285 A.D.2d 944 (2001)
- Hoover v State of New York, 80 A.D.3d 1020 (2011)

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