

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

Pizzarotti, LLC v. FPG Maiden Lane LLC

2020 NY Slip Op 05305 (N.Y. Ct. App. 2020) · No. Appeal Nos. 11921-11922; Case Nos. 2019-04691, 2019-04692, 2019-04693 · Decided October 1, 2020

SUMMARY

The Appellate Division, First Department reversed orders reducing a mechanic's lien filed by Pizzarotti, LLC and reinstated the lien. The court held that a court lacks inherent power to vacate, modify, or discharge a notice of lien under New York Lien Law § 19(6) absent a defect appearing on the face of the lien, and that factual issues concerning payment waivers required resolution at trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Gesmer, J.; González, J.; Scarpulla, J.
JURISDICTION	New York
DECIDED	October 1, 2020
DOCKET	Appeal Nos. 11921-11922; Case Nos. 2019-04691, 2019-04692, 2019-04693
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed Supreme Court, New York County orders granting defendants' motion to reduce or discharge plaintiff's mechanic's lien.
STANDARD OF REVIEW	Review on the law of orders granting a motion to reduce or discharge a mechanic's lien.
PRECEDENTIAL VALUE	Published Appellate Division opinion
PARTIES	Pizzarotti, LLC v. FPG Maiden Lane LLC, Fortis Property Group, LLC

TOPICS

mechanics liens

construction law

commercial litigation

civil procedure

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a court may vacate, modify, or discharge a mechanic's lien under Lien Law § 19(6) when no defect appears on the face of the lien.
2. Whether evidence concerning the parties' course of conduct created an issue of fact regarding whether payment-application waivers released Pizzarotti's payment claims.

HOLDINGS

1. A court has no inherent power to vacate, modify, or discharge a notice of lien under Lien Law § 19(6) when there is no defect on the face of the lien; disputes concerning the lien's validity must await trial.
2. The evidence of the parties' course of conduct raised an issue of fact as to whether the waivers released Pizzarotti's payment claims, precluding resolution of the lien dispute on the motion.

KEY QUOTATIONS

“A court has no inherent power to vacate, modify or discharge a notice of lien pursuant to Lien Law § 19(6) where there is no defect on the face of the lien, and any dispute concerning the lien's validity must await a trial”

FACTUAL BACKGROUND

Pizzarotti filed a mechanic's lien for \$33,837,618.34. Defendants moved to reduce or discharge the lien, relying in part on waivers contained in payment applications. Pizzarotti submitted evidence concerning the parties' course of conduct, creating an issue of fact as to whether those waivers released its payment claims.

PROCEDURAL HISTORY

Supreme Court, New York County, granted defendants' motion to reduce or discharge Pizzarotti's mechanic's lien, reducing it from \$33,837,618.34 to \$3,566,357.42. The Appellate Division unanimously reversed, denied the motion, and reinstated the lien.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The motion to reduce or discharge the mechanic's lien was denied and the lien was reinstated. No further specific remand instructions were stated.

CASES CITED

- Matter of Schiavone Const. Co. (Fischer & Porter Co.), 181 A.D.2d 580 (1st Dep't 1992)
- E-J Elec. Installation Co. v. Brooklyn Historical Soc'y, 43 A.D.3d 642 (1st Dep't 2007)

OPINION

PER CURIAM.

Pizzarotti, LLC v FPG Maiden Lane LLC (2020 NY Slip Op 05305) Pizzarotti, LLC v FPG Maiden Lane LLC 2020 NY Slip Op 05305 Decided on October 01, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: October 01, 2020 Before: Kapnick, J.P., Gesmer, González, Scarpulla, JJ. Index No. 651697/2019 Appeal No. 11921-11922 Case No. 2019-04691 2019-04692 2019-04693 [*1]Pizzarotti, LLC, Plaintiff-Appellant, vFPG Maiden Lane LLC, et al., Defendants-Respondents. FPG Maiden Lane LLC, et al., Defendants-Counterclaimants, vPizzarotti, LLC, et al., Counter-Defendants.

Peckar & Abramson, P.C., New York (Paul G. Monte of counsel), for appellant. Herrick, Feinstein LLP, New York (William R. Fried of counsel), for respondents. Orders, Supreme Court, New York County (Andrea Masley, J.), entered September 24, 2019 and October 3, 2019, which granted the motion of defendants FPG Maiden Lane, LLC and Fortis Property Group, LLC to reduce or discharge the mechanic's lien filed by plaintiff Pizzarotti, LLC to the extent of reducing the lien from \$33,837,618.34 to \$3,566,357.42, unanimously reversed, on the law, the motion denied, and the lien reinstated.

A court has no inherent power to vacate, modify or discharge a notice of lien pursuant to Lien Law § 19(6) where there is no defect on the face of the lien, and any dispute concerning the lien's validity must await a trial (see Matter of Schiavone Const. Co. [Fischer & Porter Co.], 181 AD2d 580 [1st Dept 1992]).

In the context of the motion, to the extent the court relied upon waivers in payment applications, plaintiff's submission of evidence of the parties' course of conduct raised an issue of fact as to whether the waivers released plaintiff's payment claims (see E-J Elec. Installation Co. v Brooklyn Historical Socy., 43 AD3d 642 [1st Dept 2007]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 1, 2020