

**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.

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