

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

LMF-RS Contracting, Inc. v. Kaljic

126 A.D.3d 436 (1st Dep't 2015) · No. 14422N; 652976/12 · Decided March 3, 2015

SUMMARY

The Appellate Division, First Department affirmed an order vacating a mechanic's lien and denying the plaintiff's motion to amend it. The court held that summary disposition was warranted because the lien amount was wilfully exaggerated, including items not attributable to labor or materials, and the plaintiff did not explain the discrepancies.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Acosta, J.P.; Andrias, J.; Saxe, J.; DeGrasse, J.; Richter, J.
JURISDICTION	New York
DECIDED	March 3, 2015
DOCKET	14422N; 652976/12
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment vacating a mechanic's lien and denying plaintiff's motion to amend the lien.
STANDARD OF REVIEW	De novo review of the order granting summary judgment and denying amendment of the mechanic's lien.
PRECEDENTIAL VALUE	published
PARTIES	LMF-RS Contracting, Inc. v. Nevzet Kaljic, Christina Kaljic, 5 LLC

TOPICS

- mechanics liens
- construction law
- summary judgment
- motion to amend
- appellate procedure

PRACTICE AREAS

- construction law
- mechanics liens
- real estate
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was properly granted to vacate the mechanic's lien because the lien amount was willfully exaggerated.
2. Whether the plaintiff should have been permitted to amend the mechanic's lien despite the discrepancies in the claimed amount.

HOLDINGS

1. Summary disposition is warranted where the evidence conclusively establishes that the amount of a mechanic's lien was willfully exaggerated.
2. The plaintiff was not entitled to amend the mechanic's lien where its own itemization demonstrated discrepancies and the lien amount was conclusively shown to be willfully exaggerated.

KEY QUOTATIONS

“Summary disposition is warranted, because the evidence that the amount of the lien was wilfully exaggerated is conclusive” (126 A.D.3d at 436)

FACTUAL BACKGROUND

LMF-RS Contracting filed a mechanic's lien that included amounts for items not constituting labor or materials. The company's own itemization revealed the discrepancies, and it did not attempt to explain them. The defendants moved for summary judgment to vacate the lien, while the plaintiff moved to amend it.

PROCEDURAL HISTORY

The Supreme Court, New York County, granted Nevzet and Christina Kaljic's motion for summary judgment vacating the mechanic's lien and denied LMF-RS Contracting's motion to amend the lien. The First Department unanimously affirmed the order with costs.

DISPOSITION

affirmed

CASES CITED

- Strongback Corp. v. N.E.D. Cambridge Ave. Dev. Corp., 25 A.D.3d 392 (1st Dep't 2006)

OPINION

PER CURIAM.

LMF-RS Contr., Inc. v Kaljic (2015 NY Slip Op 01766) LMF-RS Contr., Inc. v Kaljic 2015 NY Slip Op 01766 Decided on March 3, 2015 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 on March 3, 2015

Acosta, J.P., Andrias, Saxe, DeGrasse, Richter, JJ. 14422N 652976/12 [*1] LMF-RS Contracting, Inc., Plaintiff-Appellant, vNevzet Kaljic, et al., Defendants-Respondents.

Andrew B. Schultz, Great Neck, for appellant. Wenig Saltiel LLP, Brooklyn (Richard A. Rosenzweig of counsel), for Nevzet and Christina Kaljic, respondents. Robert M. Olshever, P.C., New York (Robert M. Olshever of counsel), for 5 LLC, respondent. Order, Supreme Court, New York County (Eileen A. Rakower, J.), entered on or about October 3, 2013, which, insofar as appealed from as limited by the briefs, granted defendants Nevzet Kaljic and Christina Kaljic's motion for summary judgment vacating the mechanic's lien, and denied plaintiff's motion to amend the mechanic's lien, unanimously affirmed, with costs.

Summary disposition is warranted, because the evidence that the amount of the lien was wilfully exaggerated is conclusive (*Strongback Corp. v N.E.D. Cambridge Ave. Dev. Corp.*, 25 AD3d 392 [1st Dept 2006]). Plaintiff included in its lien amount items that are not for labor or materials, as its own itemization makes plain, and plaintiff has failed to even attempt to explain the discrepancies.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: MARCH 3, 2015 CLERK