

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

In the Matter of the Application of
FRANCISCO PINEDA and ALEXANDER
PERROS

INDEX NO. 152506/2015

- v -

MOTION DATE 6/10/15

AB PAINTING & CONSTRUCTION, INC.

MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to compel production of an itemized statement of lien.

Table with 2 columns: Document Description and No(s). Rows include Notice of Motion/ Order to Show Cause, Answering Affirmation(s), and Replying Affirmation.

This matter comes before the Court on the verified petition and application by order to show cause of the petitioners pursuant to Lien Law §38 for an itemized statement of labor and materials and the pertinent provisions of the contract for a mechanic's lien filed on December 19, 2014 in the amount of \$31,843.75, against the premises known as 25 Hamilton Terrace in Manhattan.

On February 10, 2015, the petitioners served a demand for an itemized statement, which the respondent did not furnish until April 17, 2015, after the instant application was filed. The petitioners contended that such statement was insufficient in that it did not include the provisions of the contract under which items were performed or furnished and a breakdown of labor and materials along with the sums attributable to each.

In response to the court's order, the respondent provided a second itemized statement on May 12, 2015, which asserts that the respondent completed 95% of the contract, representing a value of \$55,693.75, of which \$44,130 was paid, leaving a balance of \$11,563.75. It also lists eight change orders and the total value claimed for each.

Lien Law § 38 provides that "[a] lienor who has filed a notice of lien shall, on demand in writing, deliver to the owner or contractor making such demand a statement in writing which shall set forth the items of labor and/or material and the value thereof which make up the amount for which he claims a lien, and

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

which shall also set forth the terms of the contract under which such items were furnished." "Itemization is ... required only when it is necessary 'to apprise the owner of details of the lienor's claim.'" Assoc. Bldg. Servs., Inc. v. Pentecostal Faith Church, 112 AD3d 1130, 1131 (3rd Dept. 2013) *quoting* F.J.C. Cavo Constr., Inc. v. Robinson, 81 AD2d 1005, 1005 (4th Dept. 1981). It is well established that where the work under a contract is incomplete or where extra work and materials are claimed, "[a] bare specification of a certain sum for labor and another sum for material listed under a general description of the work performed will not suffice." Matter of 819 Sixth Ave Corp. v. T. & A. Assocs., Inc., 24 AD2d 446, 446 (1st Dept. 1965). "[T]he statement served by the lienor should set forth the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of labor charges." *Id.* at 446; *see* Matter of DePalo v McNamara, 139 AD2d 646 (2nd Dept. 1988); Matter of Burdick Assocs. Owners Corp. v Karlan Constr. Corp., 131 AD2d 672 (2nd Dept. 1987).

Here, the respondent's work under the contract was undisputedly incomplete and the respondent claims sums owed for various change orders that it performed. Therefore, the petitioners were entitled to an itemized statement to enable them to verify the respondent's claim. *See* Matter of DePalo v McNamara, *supra*; Matter of Burdick Assocs. Owners Corp. v Karlan Constr. Corp., *supra*.

The second itemized statement provided by the respondent is, however, insufficient. The statement asserts that the respondent completed 95% of the contract, but fails to specify which items under the contract it performed that remain unpaid and which provisions it did not complete. As the parties dispute the nature and cost of the work performed under the contract, a detailed itemized statement is necessary and the respondent's lack of detail renders the itemized statement deficient. *See* Matter of Burdick Assocs. Owners Corp. v Karlan Constr. Corp., *supra*. Further, the change orders listed are done so only in general terms and there is no specification as to the description, quantity, and costs of the materials the respondent used and the nature of the labor, time spent, and associated charges for each of the claimed change orders. Absent such specification, the petitioners are unable to check the details of the respondent's claim and the itemized statement supplied by the respondent is insufficient under Lien Law § 38. *See* Matter of DePalo v McNamara, *supra*; Matter of 819 Sixth Ave Corp. v. T. & A. Assocs., Inc., *supra*.

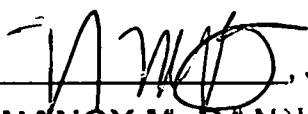
Accordingly, it is

ORDERED that the petition to discharge the mechanic's lien filed by respondent AB Painting & Construction, Inc. against 25 Hamilton Terrace, New York, NY, designated as Block 2050, Lot 102, is granted and that lien is hereby discharged, and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: September 11, 2015


_____, JSC
HON. NANCY M. BANNON

1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check as appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER