

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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INDEX NO. 158091/2022

IN THE MATTER OF THE APPLICATION OF AVP
MANAGEMENT LTD. D/B/A IPANEMA RESTAURANT,

MOTION DATE 10/11/2023

Petitioner,

MOTION SEQ. NO. 002

- v -

BOLT DESIGN, LLC,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion for MODIFY ORDER/JUDGMENT.

Upon the foregoing documents, the motion, pursuant to CPLR 5019, of respondent to "correct" this Court's Decision and Order dated January 13, 2023, is hereby denied.

New York's Lien Law "does not prohibit a lienor from filing a new lien on the same claim following such cancellation." Red Hook 160, LLC v 2M Mech., LLC, 203 AD3d 932, 932-33 (2d Dept 2022). However, in the case at bar respondent was specifically given notice that petitioner would seek to have the instant lien "vacated and canceled with prejudice" (NYSCEF Doc. No. 10) and then defaulted by neither answering nor appearing in this proceeding. That the lien was discharged with prejudice was not a "defect or irregularity in the papers" that should be cured pursuant to CPLR 5019. Further, respondent has failed to offer a meritorious defense or a reasonable excuse for its prior default that might allow this Court to offer relief pursuant to CPLR 5015.

12/28/2023

DATE



ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE