

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

In the Matter of the Application of
MVC PROPERTIES LLC,

Petitioner,

For an Order Pursuant to Lien Law § 59
Discharging and Vacating a Certain Notices of
Mechanic's Lien, under Lien Law Filed by
CAMERON ENGINEERING & ASSOCIATES,
L.L.P. against the Real Property Located at
(1) 21 Howell N. Avenue (0200-488.00-01.00-007.000);
(2) 15 Howell N. Avenue (0200-488.00-01.00-010.001);
(3) 1723 Middle Country Road (0200-488.00-01.00-
013.002);
(4) 1759 Middle Country Road (0200-488.00-01.00-
013.003);
(5) 0 Middle Country Road (0200-488.00-01.0-013.004);
(6) 1707 Middle Country Road (0200-488.00-01.0-
014.000);
(7) 1693 Middle Country Road (0200-488.00-01.0-
015.000);
(8) 21 Hammond Road (0200.488.00-01.0-016.000);
(9) 22 Hammond Road (0200-488.00-01.0-017.000),
Centereach, Suffolk County, New York on the Tax Map of
the County of Suffolk, State of New York,

-against-

CAMERON ENGINEERING & ASSOCIATES,
L.L.P.,

Respondent.

ORIG. RETURN DATE: SEPT. 13, 2012
FINAL SUBMISSION DATE: SEPT. 27, 2012
MTN. SEQ. #: 001
MOTION: MG

PLTF'S/PET'S ATTORNEY:
GARY ROSEN LAW FIRM, P.C.
1010 NORTHERN BOULEVARD - SUITE 322
GREAT NECK, NEW YORK 11021
516-437-3400

DEFT'S/RESP ATTORNEY:
LAW OFFICES OF STEPHEN M. ABRAMI, PLLC
THE JERICHO ATRIUM
500 NORTH BROADWAY - SUITE 223
JERICHO, NEW YORK 11743
516-433-4900

Upon the following papers numbered 1 to 7 read on this motion _____

TO DISCHARGE MECHANIC'S LIEN

Order to Show Cause and supporting papers 1-3; Affidavit in Opposition and supporting papers
4, 5; Reply Affirmation and supporting papers 6, 7; it is,

ORDERED that this motion by petitioner, MVC PROPERTIES LLC, for an Order, pursuant to Lien Law § 59, vacating and discharging a Notice of Mechanic's Lien in the amount of \$35,386.87 filed by respondent, CAMERON ENGINEERING & ASSOCIATES, L.L.P., on March 19, 2012, in the Office of the Suffolk County Clerk against the real property located at: (1) 21 Howell N. Avenue (0200-488.00-01.00-007.000); (2) 15 Howell N. Avenue (0200-488.00-01.00-010.001); (3) 1723 Middle Country Road (0200-488.00-01.00-013.002); (4) 1759 Middle Country Road (0200-488.00-01.00-013.003); (5) 0 Middle Country Road (0200-488.00-01.0-013.004); (6) 1707 Middle Country Road (0200-488.00-01.0-014.000); (7) 1693 Middle Country Road (0200-488.00-01.0-015.000); (8) 21 Hammond Road (0200.488.00-01.0-016.000); (9) 22 Hammond Road (0200-488.00-01.0-017.000), Centereach, Suffolk County, New York on the Tax Map of the County of Suffolk, State of New York, is hereby **GRANTED** for the reasons set forth hereinafter. The Court has received opposition hereto from respondent CAMERON ENGINEERING & ASSOCIATES, L.L.P.

This is a proceeding to discharge and vacate a Notice of Mechanic's Lien filed by respondent in the Office of the Suffolk County Clerk on March 19, 2012. Petitioner alleges that respondent failed to comply with a Notice to Commence Action to Enforce Lien served upon respondent on June 8, 2012, pursuant to Lien Law § 59, which required respondent to commence an action to enforce the lien within thirty days thereof, or by July 12, 2012. Petitioner informs the Court that respondent has failed to commence an action to enforce its lien to date, notwithstanding the Notice to Commence Action and the instant application to vacate the lien. As such, petitioner seeks to discharge and vacate the lien.

The Court notes that Lien Law § 59 is not a statute of limitations. The lien does not fall by non-compliance with a notice. A court has the power to excuse a lienor for not commencing an action within the time stated in the notice (see *Application of Empress Apartments, Inc.*, 26 Misc 2d 852 [Sup Ct, Kings County 1960]; *In re Radovsky*, 6 Misc 3d 1018[A] [Dist Ct, Nassau County 2004]). While the Court is mindful of prejudicing the rights of the lienor by a strict interpretation of Lien Law § 59 (see *In re Cohen*, 209 AD 415 [1924]), under these circumstances the Court finds that respondent has not offered a valid excuse for its continuing failure to commence an action to foreclose the lien. Respondent has not denied that it was properly served by petitioner with a Notice to Commence Action on June 8, 2012. Although respondent will lose the lien on the property if the Court grants the instant application, a contract action may still be pursued and respondent is not without legal remedy for the monies allegedly

owed to it (see *M3GH Props. LLC v Debut Concrete & Gen. Constr., Inc.*, 18 Misc 3d 1108[A] [Sup Ct, Suffolk County 2007]; *Miller v T.A. & J.M. General Contractors, Inc.*, 124 Misc 2d 273 [Sup Ct, Kings County 1984]).

Accordingly, this petition is **GRANTED** to the extent that the Notice of Mechanic's Lien, filed by respondent on March 19, 2012, is hereby vacated and discharged, and the Clerk of Suffolk County is directed to do so. It is undisputed herein that the lienor failed to commence an action on or before July 12, 2012, to enforce the lien.

The foregoing constitutes the decision and Order of the Court.

Dated: April 11, 2013


HON. JOSEPH FARNETI
Acting Justice Supreme Court

FINAL DISPOSITION

NON-FINAL DISPOSITION