

REAL ESTATE

Lien Law §19's Summary Discharge of Lien for Private Improvement Clarified by Court of Appeals

By Andrew Lieb

In *Rivera v. Department of Housing Preservation and Development of City of New York*, the Court of Appeals addressed the issue of “whether a court may summarily discharge [] a lien for facial invalidity under Lien Law §19(6) based on its finding that the notice of lien seeks an unreasonable amount of expenses” or if instead, an owner’s only recourse, under such circumstances, is to “force a foreclosure trial” pursuant to Lien Law §19(3). The court held that forcing a foreclosure trial is the only recourse available in reversing the First Department and settling a split between the First and Second Departments on the issue. See *Matter of Enriquez v. Department of Hous. Preserv. & Dev. of the City of N.Y.*, 129 A.D.3d 405 (1st Dept. 2015); *Rivera v. Department of Hous. Preserv. & Dev. of the City of N.Y.*, 130 A.D.3d 802 (2d Dept. 2015). In such, the court appears to have narrowly interpreted the term “character” in Lien Law §19(6) to only refer to “categories of expenses,” not amounts of expenses.

Lien Law §19(6) states, in pertinent part, as follows:

Where it appears from the face of the

notice of lien that the claimant has no valid lien by reason of the character of the labor or materials furnished and for which a lien is claimed, or where for any other reason the notice of lien is invalid by reason of failure to comply with the provisions [contents of notice of lien], or where it appears from the public records that such notice has not been filed in accordance with the provisions [filing of notice of lien], the owner or any other party in interest, may apply to the supreme court . . . for an order summarily discharging of record the alleged lien . . .

Lien Law §19(3) states, in pertinent part, as follows:

By order of the court vacating or cancelling such lien of record, for neglect of the lienor to prosecute the same, granted pursuant to section fifty-nine of this chapter.

Lien Law §59 provides, in summary, a right by a licensee to notice the lienor to commence a foreclosure proceeding or have the lien discharged.



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Before the court was a lien by the New York City Department of Housing Preservation and Development (HPD) for reimbursement of relocation expenses, including temporary shelter. Such expenses were provided by HPD incident to a vacate order “to residents of a privately owned building [who were] displaced by” such order. NYC Administrative Code §§ 26-305 & 26-301(1)(a)(v); 28 RCNY 18-01.

In initially hearing the issue, the Supreme Court held “that the notice was facially valid, the lien therefore could not be summarily discharged, and accordingly any substantive disputes were properly raised in a foreclosure trial.” In revering, the First Department held that “HPD’s financing of the tenant’s residence in a hotel for an entire year was not reasonable;” thereby ruling on whether the lien sought an unreasonable amount of expenses. In overturning the First Department, the Court of Appeals clarified “that the liens filed by HPD here were facially valid and so summary discharge was not appropriate.” Specifically, the Court explained that “[a]n allegedly unreasonable amount of

claimed expenses does not render a notice of lien facially invalid.” However, the court left open the possibility for a summary discharge where “a notice of lien includes non-lienable expenses,” as opposed to unreasonable amounts of expenses.

The takeaway for practitioners is to look to the category of expenses claimed, not the amounts thereof, when evaluating whether a summary discharge should be sought on a NYC HPD lien. Further, this standard is applicable beyond NYC HPD liens because the lien before the court was “governed by the provisions of the Lien Law that are applicable to mechanic’s liens.” See Lien Law Art.2. Therefore, practitioners addressing all mechanic’s liens should be mindful to look to the categories of expenses noticed, not the amounts claimed, when analyzing Lien Law §19(6).

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb is a past Co-Chair of the Real Property Committee of the Suffolk Bar Association and has been the Special Section Editor for Real Property in The Suffolk Lawyer for several years.

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