

OCEAN STEEL CORPORATION,

Plaintiff,

vs.

CONNELL HOSPITALITY LLC, TOCCI
BUILDING CORPORATION INC., and
MARLBORO GROUP INTERNATIONAL,
LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO.: UNN-L-3136-17

CIVIL ACTION

OPINION

FILED

APR 18 2018

ROBERT J. MEGA, J.S.C.

Sarah B. Biser, Esq. and Steven J. Link, Esq for plaintiff, Ocean Steel Corporation (Fox Rothschild LLP)

Peter J. Smith, Esq. for defendant, Connell Hospitality LLC (Connell Foley LLP)

The Honorable Robert J. Mega, J.S.C.

OPINION

This matter comes before the Court on defendant, Connell Hospitality LLC's (hereinafter "Connell Hospitality") motion to dismiss plaintiff, Ocean Steel Corporation's (hereinafter "Plaintiff" or "Ocean Steel") Complaint pursuant to Rule 4:6-2(e). In the alternative, Connell Hospitality seeks to stay Count I (Foreclosure of Construction Lien) of Ocean Steel's Complaint, pending the outcome of mandatory, binding arbitration between Connell Hospitality and co-defendant, Tocci Building Corporation Inc. (hereinafter "Tocci").¹ Ocean Steel opposes Connell Hospitality's motion.

Facts

The following facts are derived from the parties' pleadings, briefs and oral argument. For the purposes of the instant motion, "all facts alleged in the complaint and legitimate inferences

¹ Connell Hospitality's motion also sought to dismiss Counts IV (Unjust Enrichment) and V (Quantum Meruit) of Ocean Steel's Complaint with prejudice. However, Ocean Steel withdrew these claims against Connell Hospitality, initially without prejudice in its opposition brief, but with prejudice on the record during oral argument. Therefore, the additional relief sought in Connell Hospitality's motion is moot and will not be analyzed herein.

drawn therefrom are deemed admitted.” Rieder v. Department of Transp. 221 N.J. Super. 547, 552 (App. Div. 1987) (citations omitted).

The Parties

Ocean Steel is a Delaware corporation with a place of business located at 53 Shaw Road, Conklin, New York 13748.

Connell Hospitality is a New Jersey limited liability company with a place of business located at 200 Connell Drive, Berkeley Heights, New Jersey 07922.

Tocci is a Massachusetts corporation with a place of business located at 660 Main Street, Woburn, Massachusetts 01801.

Marlboro Group International, LLC, (hereinafter “Marlboro”) is a New York limited liability company with a place of business located at 28 East 28th Street, Concourse, New York 10016..

The Site Project

The underlying matter arises out of a construction project for the construction of an Embassy Suites Hotel in Berkeley Heights, New Jersey, located at 250 Connell Drive, Berkley Heights, New Jersey (hereinafter the “Site Project”). The Site Project is an over 18,000 square foot, all-suite hotel. At all times relevant to Ocean Steel’s Complaint, Connell Hospitality is the owner of the real property known as 250 Connell Drive, Berkley Heights (the “Property”).

The real property known as 250 Connell Drive, Berkley Heights was transferred from the Connell Company to Connell Hospitality LLC on or about March 21, 2014. Therein, the property is designated as **Block 4301, Lot 1.012**. *Id.* (emphasis added).

On or about January 19, 2015, Connell Hospitality entered in a construction contract with Tocci to build the Site Project (“Connell-Tocci Prime Contract”). Section 5.2 of the Connell-Tocci Prime Contract authorized Tocci to hire subcontractors approved by Connell Hospitality and its architect, Raintree Architecture, Inc. (hereinafter “Raintree Architecture”).

On or about February 12, 2015, Tocci entered into a subcontract with Ocean Steel (“Tocci-Ocean Steel Subcontract”) for \$1,514,000.00 to supply and install structural steel for the Site Project. The Tocci-Ocean Steel Subcontract is formally known as “Standard Form of Agreement Between Construction Manager and Trade Contractor.”

Ocean Steel claims that it performed additional work pursuant to certain change orders totaling \$646,572.93 of additional structural settle material and services provided for the

Project. Accordingly, Ocean Steel contends the total amount of the Tocci-Ocean Steel Subcontract, including change orders, is \$2,160,572.93.

Ocean Steel contends that it completed its entire scope of work, plus certain change orders in accordance with all plans and specifications by September 1, 2016. Despite this, Ocean Steel alleges that Tocci has only paid \$1,993,219.12 of Ocean Steel's billed work, leaving an outstanding contract balance of \$167,353.81. Ocean Steel demanded payment from Tocci for the unpaid balance, but Tocci refused to tender same.

Ocean Steel's November 30, 2016 Construction Lien

As a result of the foregoing, Ocean Steel filed a Construction Lien Claim for \$167,353.81 in the Union County Clerk's Office on November 30, 2016 (the "November 30, 2016 Construction Lien"). The November 30th Construction Lien was recorded as Instrument Number 3095.

The November 30, 2016 Construction Lien was lodged against "the real property of Connell Hospitality LLC [...] described as Block 4301, **Lot 1.12** (emphasis added) on the tax map of the Berkeley Heights, County of Union, State of New Jersey, and also known as 250 Connell Drive, Berkeley Heights, NJ 07922."

Ocean Steel's December 1, 2016 Construction Lien

On December 1, 2016, Ocean Steel filed a second Construction Lien Claim for \$167,353.81 in the Union County Clerk's Office.

The December 1, 2016 Construction Lien was lodged against "the real property of 200 Connell LLC [...] described as Block 4301, **Lot 1.11** (emphasis added) on the tax map of the Berkeley Heights, County of Union, State of New Jersey, and also known as 250 Connell Drive, Berkeley Heights, NJ 07922..."

Connell Hospitality Terminates Tocci and Hires Marlboro

In or about February 2017, Connell Hospitality terminated Tocci under the Connell-Tocci Prime Contract. Subsequent thereto, Connell Hospitality engaged Marlboro as the new construction manager to replace Tocci.

Ocean Steel contends that it made further demands for payment on the outstanding contract balance of \$167,353.81, but neither Connell Hospitality nor Ocean Steel has paid the outstanding balance.

Ocean Steel's Complaint

On August 29, 2017, Ocean Steel filed its six-count complaint against Connell Hospitality, Tocci and Marlboro. Therein, Ocean Steel asserts the following causes of action:

- Count I: Foreclosure of Construction Lien;
- Count II: Breach of Contract;
- Count III: New Jersey Prompt Payment Act;
- Count IV: Unjust Enrichment;
- Count V: Quantum Meruit;
- Count VI: Breach of Covenant of Good Faith and Fair Dealing;²

By letter dated September 8, 2017, Connell Hospitality demanded that Ocean Steel voluntarily dismiss its lawsuit against Connell Hospitality.

Ocean Steel Discharges the December 1, 2016 Construction Lien

On or about September 26, 2017, Ocean Steel voluntarily discharged the December 1, 2016 Construction Lien, filed on 250 Connell Drive, designated as Block 4301, Lot 1.11 on the tax map of the Berkeley Heights.

Connell Hospitality argues that Ocean Steel's construction liens were not properly lodged, were willfully overstated and/or were not timely filed.

Connell Hospitality contends that the erroneous and/or untimely filing of the December 1, 2016 Construction Lien violates the Construction Lien Law (hereinafter "CLL") and therefore results in the forfeiture of "all claimed lien rights" by Ocean Steel under N.J.S.A. 2A:44A-15(a) – including the November 30, 2016 Construction Lien. Connell Hospitality further argues that Ocean Steel's discharge of the December 1, 2016 Construction Lien cannot rectify Ocean Steel's violation of the CLL, nor can it salvage the November 30, 2016 Construction Lien.

Moreover, Connell Hospitality argues that Ocean Steel's November 30, 2016 Construction Lien is willfully overstated and is subject to discharge.

As a result of the foregoing, Connell Hospitality concludes that Ocean Steel's construction liens are subject to discharge and that it is entitled to collect court costs and reasonable attorneys' fees incurred in defending or causing the discharge of Ocean Steel's liens.

In the alternative, Connell Hospitality argues that Count I of Ocean Steel's Complaint must be stayed, pending the resolution of arbitration between Connell Hospitality and Tocci.

² As previously mentioned, Ocean Steel withdrew Counts IV (Unjust Enrichment) and V (Quantum Meruit) as to Connell Hospitality.

Connell Hospitality argues that even if Ocean Steel's lien claim is proper, their claim is entirely dependent upon a contract balance being due, if any, from Connell Hospitality to Tocci under the Connell-Tocci Prime Contract. *Id.* Additionally, Connell Hospitality argues that N.J.S.A. 2A:44A-24.1 mandates Ocean Steel's lien foreclosure be stayed pending the outcome of arbitration between the parties. *See Thomas Group, Inc. v. Wharton Senior Citizen Housing, Inc.*, 163 N.J. 507 (2000); *Arco Construction Group, Inc. v. Sinowest Financial Services*, 2011 N.J. Super. Unpub. LEXIS 363 (App. Div. Feb. 17, 2011).

Ocean Steel argues there is no basis for dismissing its November 30, 2016 Construction Lien. Ocean Steel contends that the December 1, 2016 Construction Lien is irrelevant to the enforceability of the November 30, 2016 Construction Lien because it was filed against a different property and owner than the November 30, 2016 Construction Lien, albeit against 240 Connell Drive, Berkley Heights, New Jersey.

Ocean Steel further contends that it filed the December 1, 2016 Construction Lien "[i]n an abundance of caution" because Ocean Steel was unable to determine which tax lot the Site Project was built on. Ocean Steel explains that it intended to file one lien claim on the Project's property, which it believed was 250 Connell Drive based on the information in its Contract with Tocci. Ocean Steel contends that it never intended to foreclose both liens, rather it intended to immediately discharge any unnecessary lien after determining the correct tax lot.

Ocean Steel disputes Connell Hospitality's interpretation of N.J.S.A. 2A:44A-15(a). Ocean Steel argues that the phrase "the claimant shall forfeit all claimed lien rights" effects only the lien rights claimed under the December 1, 2016 Construction Lien. As such, Ocean Steel contends it would only forfeit its right to encumber the property identified in that lien – 250 Connell Drive, Tax Block 4301, Lot 1.11, owned by 200 Connell LLC. Ocean Steel further contends this is not the same property that is subject to the November 30, 2016 Construction Lien – 250 Connell Drive, Tax Block 4391, Lot 1.12, owned by Connell Hospitality. In other words, Ocean Steel argues that any forfeiture of Ocean Steel's lien rights against Lot 1.11 – the lot referenced in the December 1, 2016 Construction Lien – has no impact whatsoever on its lien rights asserted in the November 30, 2016 Construction Lien against Lot 1.12 – as the phrase "all claimed lien rights" refers only to the claimed lien rights to the property which is the subject of the lien.

Moreover, Ocean Steel argues that the forfeiture of lien rights described in N.J.S.A. 2A:44A-15(a) only applies to “rights to file *subsequent* lien claims to the extent of the face amount claimed in the lien claim.” N.J.S.A. 2A:44A-15(a) (emphasis added in Ocean Steel’s Br.). Ocean Steel contends that this language would be superfluous if Connell Hospitalities’ “expansive interpretation” of “all claimed lien rights” were correct. Furthermore, under the principle of *expressio unius est exclusion alterius*, Ocean Steel argues that the Legislature’s specific reference to the forfeiture of subsequent claims must be construed to mean that the Legislature did not intend for prior claims to be forfeited as well. Accordingly, Ocean Steel argues that the CLL cannot be interpreted as requiring forfeiture of the earlier filed November 30, 2016 Construction Lien based on any claimed invalidity of the later-filed December 1, 2016 Construction Lien.

Ocean Steel additionally argues that its November 30, 2016 Construction Lien is not willfully overstated. Initially, Ocean Steel argues that Connell Hospitality’s argument raises a question of fact that may not be decided on a motion to dismiss. Further, Ocean Steel contends that N.J.S.A. 2A:44A-15(a) demands that Connell Hospitality demonstrate that the lien amount was “willfully overstated.” Ocean Steel argues that a “willful overstatement connotes an intent to recover that to which the claimant knows he is not entitled, or other words, a claim made in bad faith.” Legge Indus. V. Joseph Kushner Hebrew Academy/JKHA, 333 N.J. Super. 537, 561 (App. Div. 2000). Ocean Steel contends there is no basis to support such a finding.

Connell Hospitality posits that Ocean Steel essentially seeks the Court’s approval of its sequential filing of two construction lien claims for materials claimed to have been provided on the same, for the same debt and arising out of the same agreement. Connell Hospitality argues that the CLL sets forth the specific process by which a lien claim must be filed and that Ocean Steel’s reason for doing so is irrelevant. Connell Hospitality argues that it is unreasonable to suggest that the CLL intended to allow claimants free rein to file a lien on a property other than that which is being improved, for the same work, without consequence.

Connell Hospitality contends that Ocean Steel misinterprets the plain language of the N.J.S.A. 2A:44-15(a) in an attempt to create an ambiguity. Connell Hospitality argues that a reading of the plain language of the statute contradicts Ocean Steel’s interpretation.

Moreover, Connell Hospitality again argues that Ocean Steel’s November 30 Lien is willfully overstated. Connell Hospitality argues that Ocean Steel cannot avoid this issue by

claiming that Connell Hospitality relied upon documents outside of the pleadings. Connell Hospitality contends that all documents referred or cited in support of its claim were proper because they are integral to Ocean Steel's claims. See Banco Popular N. Am. V. Gandi, 184 N.J. 161, 183 (2005).

Legal Analysis and Findings

Rule 4:6-2 provides:

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1. If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. . . .

To be sufficient, "a pleading . . . shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which the pleader claims entitlement." R. 4:5-2. "[P]leadings reciting mere conclusions without facts and reliance on subsequent discovery do not justify a lawsuit." Glass v. Suburban Restoration Co., Inc., 317 N.J. Super. 574, 582 (App. Div. 1998). Consequently, "it is fundamental that the pleading must fairly apprise the adverse party of the claims and issues raised and that on a challenge to adequacy, all facts, reasonable inferences and implications are to be considered most strongly in favor of the pleader." Pressler, Current N.J. Court Rules, comment 1 to R. 4:5-2. In determining whether a complaint sufficiently alleges facts giving rise to a cause of action, the Court must read the complaint "indulgently." Van Dam Egg Co. v. Allendale Farms, Inc., 199 N.J. Super. 452, 455 (App. Div. 1985).

Under R. 4:6-2(e), a party may make a motion to dismiss for failure to state a claim upon which relief can be granted. In reviewing a motion to dismiss, the Court takes a "generous and hospitable approach" and "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart-Morristown v. Sharp Electronics

Corp., 116 N.J. 739, 746 (1989) (internal citations omitted). “For purposes of analysis, plaintiffs are entitled to every reasonable inference of fact.” Id. Therefore, a motion to dismiss pursuant to R. 4:6-2(e) should be granted “in only the rarest of instances.” NCP Litig. Trust v. KPMG LLP, 187 N.J. 353, 365 (2006).

The CLL allows a contractor or supplier who is owed payment for its work or materials to file a lien against the real property on which the improvements are constructed. N.J.S.A. 2A:44A-3(a). The primary purpose of this law is to secure payment of monies due to contractors and suppliers of a construction project. Thomas Group, Inc., 163 N.J. 507 (2000).

A secondary purpose of the CLL is to “protect owners” against paying more than once for the same work or materials. Labov Mech., Inc. v. E. Coast Power, L.L.C., 377 N.J. Super. 240, 245 (App. Div. 2005). To effect the second purpose, the statute limits the lien to the amount available in the “lien fund,” which “shall not exceed the unpaid portion of the contract price of the claimant’s contract for the work, services, material or equipment provided.” N.J.S.A. 2A:44A-9(a).

The lien claimant is required by law to commence suit to enforce a claim. N.J.S.A. 2A:44A-8. However, the use of the lien claim procedure is not mandatory nor the exclusive remedy. See e.g., Orefice v. ADR, 315 N.J. Super. 493 (App. Div. 1998).

The CLL establishes detailed procedures for lien filings. N.J.S.A. 2A:44A-6(a)(2), “in all cases except those involving a residential construction contract, the lien claim form shall then be lodged for record within 90 days following the date the last work, services, material or equipment was provided for which payment is claimed.” N.J.S.A. 2A:44A-6(a)(2).

The CLL imposes significant penalties for the filing of an invalid lien or failing to adhere to the statutory requirements. The penalties include payment of the other party’s attorneys’ fees, court costs and any damages including damages to any injured party by the filing of an improper lien. N.J.S.A. 2A:44A-15. Pursuant to N.J.S.A. 2A:44A-15(a), these liabilities would apply if a “lien claim is without basis, the amount of the lien claim is willfully overstated, or the lien claim is not lodged for record in substantially the form or in the manner or at a time not in accordance with this act.” Without basis” means “frivolous, false, unsupported by a contract, or made with malice or bad faith or for any improper purpose.” N.J.S.A. 2A:44A-15(d). Willfully overstated lien claims that are subject to forfeiture are claims filed by claimants who intentionally seek to recover an amount to which they are not entitled. Legge Industries, 333 N.J. Super. 537.

A claimant who fails to comply with the CLL “shall forfeit all claimed lien rights and rights to file subsequent lien claims to the extent of the face amount claimed in the lien claim.” N.J.S.A. 2A:44A-15(a). However, if a lien claim “is forfeited pursuant to this section, [...] nothing herein shall be construed to bar the filing of a subsequent lien claim, provided, however, any subsequent lien claim shall not include a claim for the work, services, equipment or material claimed within the forfeited lien claim.” N.J.S.A. 2A:44A-15(c).

The CLL defines a “lien” or “construction lien” as a lien on the owner’s interest in the real property arising pursuant to this act. N.J.S.A. 2A:44A-2

The CLL defines a “lien claim” as a claim, by a claimant, for money for the value of work, services, material or equipment furnished in accordance with a contract and based upon the contract price and any amendments thereto, that has been secured by a lien pursuant to this act. Id. The term “value” includes retainage earned against work, services, materials or equipment furnished. Id.

In the present matter, Ocean Steel contends that it performed work at the Site Project pursuant to the terms of the Tocci-Ocean Steel Subcontract. Ocean Steel states that as of September 1, 2016, it completed its entire scope of work, plus certain change orders in accordance with all plans and specifications by September 1, 2016. Despite this, Ocean Steel contends it is still owed monies pursuant to the Tocci-Ocean Steel Subcontract. As a result, Ocean Steel filed two construction liens.

The November 30, 2016 Construction Lien - Instrument Number 3095 - was filed for **\$167,353.81** and lodged against the real property of **Connell Hospitality LLC** alleged to be correctly described as “**Block 4301, Lot 1.12** on the tax map of the Berkeley Heights, County of Union, State of New Jersey, and also known as **250 Connell Drive, Berkeley Heights, NJ 07922.**” (emphasis added).

The December 1, 2016 Construction Lien was also filed for **\$167,353.81**, but lodged against “the real property of **200 Connell LLC** [...] described as **Block 4301, Lot 1.11** on the tax map of the Berkeley Heights, County of Union, State of New Jersey, and also known as **250 Connell Drive, Berkeley Heights, NJ 07922...**” (emphasis added).

In the present matter, the Court questions the validity of the November 30, 2016 Construction Lien. Although not briefed or argued by either party, the lot/block numbers described in the November 30, 2016 Construction Lien are inconsistent with the lot/block

numbers described in the Deed, which transferred the subject property known as 250 Connell Drive from the Connell Company to Connell Hospitality. In the March 21, 2014 Deed, the property is designated as **Block 4301, Lot 1.012**. In the November 30, 2016 Construction Lien, the property is described as **Block 4301, Lot 1.12**. The lien language is inconsistent with the Deed.

The December 1, 2016 Construction Lien was untimely and therefore defective. According to N.J.S.A. 2A:44A-6(a)(2) “in all cases except those involving a residential construction contract, the lien claim form shall then be lodged for record within 90 days following the date the last work, services, material or equipment was provided for which payment is claimed.” N.J.S.A. 2A:44A-6(a)(2). The December 1, 2016 Construction Lien was filed ninety-one (91) days after September 1, 2016 – the date on which Ocean Steel contends it completed its work under the Tocci-Ocean Steel subcontract. This fact is indisputable and not directly challenged by Ocean Steel in its opposition to Connell Hospitality’s motion.

Moreover, the December 1, 2016 Construction Lien was filed against the same address – 250 Connell Drive, Berkeley Heights, NJ 07922 – as the November 30, 2016 Construction Lien. While the November 30 and December 1, 2016 Construction Liens are filed against separate corporate entities – Connell Hospitality and 200 Connell LLC, respectively – and identify separate lot/block numbers - Block 4301, Lot 1.12 and Block 4301, Lot 1.11, respectively – they use the same address – 250 Connell Drive, Berkeley Heights, NJ 07922 – and indisputably arise out of the Site Project and contractual agreement. Nothing in the CLL authorizes a subcontractor or any other possible lien claimant to file successive liens on the same project, for the same debt, which arises out of the same agreement.³ Notwithstanding Ocean Steel’s proffered good faith reasons for doing so, Ocean Steel took certain actions to secure an alleged debt when it was unsure as to what parcel it actually worked on. This action, regardless of the motivation, would appear to run counter to the governing principles of the CLL.

Pursuant to N.J.S.A. 2A:44A-15(a), a claimant who fails to comply with the CLL “**shall forfeit all claimed lien rights and rights to file subsequent lien claims to the extent of the face amount claimed in the lien claim.**” (emphasis added). The CLL defines a “lien claim” as a claim,

³ The Court notes that N.J.S.A. 2A:44A-2 does permit the filing of multiple construction liens for the same work when the real property in question is located in more than one New Jersey County. However, the situation contemplated by N.J.S.A. 2A:44A-2 is clearly distinguishable from the case at bar because the subject property of the Site Project is located entirely in Union County.

by a claimant, for money for the value of work, services, material or equipment furnished in accordance with a contract and based upon the contract price and any amendments thereto, that has been secured by a lien pursuant to this act. Id.

It is undeniable that the December 1, 2016 Construction Lien was fatally flawed as it was untimely filed on the 91st day. Ocean Steel undertook actions not expressly authorized under the CLL in an attempt to secure the alleged outstanding monies due under the Tocci-Ocean Steel Subcontract. As such, the remedial provisions of N.J.S.A. 2A:44A-15(a) are triggered. The question before the Court is now whether the improperly lodged December 1, 2016 Construction Lien affects the November 30, 2016 Construction Lien in any manner. The answer is affirmative, as it lists the same 250 Connell address in both liens.

In interpreting the statutory language of the CLL, the Courts notes that it should be construed sensibly and in furtherance of the underlying legislative purpose. Brooks v. Odom, 150 N.J. 395, 401 (1997). The Court is cognizant of the fact that the primary purpose of the CLL is to secure payment of monies due to contractors and suppliers of a construction project. Thomas Group, Inc., 163 N.J. 507 (2000). However, a secondary purpose of the CLL is to “protect owners” against paying more than once for the same work or materials. Labov Mech., Inc. v. E. Coast Power, L.L.C., 377 N.J. Super. 240, 245 (App. Div. 2005). Neither purpose is served by an interpretation that would permit a subcontractor to file construction liens on properties and/or parcels on which they did not perform services or otherwise improve, without consequence. A plain reading of N.J.S.A. 2A:44A-15(a), supports the conclusion that an improper lodging of a construction lien forfeits all claimed lien rights, not just those claimed in the contested lien.

No matter Ocean Steel’s proffered motives, the inescapable fact in this case is that Ocean Steel attempted to file two liens on the same property - 250 Connell Drive - arising out of the same contract for the same work performed. While Ocean Steel may have been unsure as to which lot/block number actually constituted 250 Connell Drive, they proceeded nonetheless, with two liens listing 250 Connell Drive. The parcels may have been owned by different corporate entities, but the fact still remains that Ocean Steel attempted to file two construction liens against the same property, arising out of the same contract for the same work performed. Further, it is clear from a review of the March 21, 2014 Deed that the November 30, 2016 Construction Lien was recorded timely, but with an incorrect or defective lot number. The lot in the November 30, 2016 Construction Lien is designated as **Lot 1.12**. The lot in the March 21, 2014 Deed for 250 Connell

Drive is designated as **Lot 1.012**, thus rendering the lien defective. As such, Ocean Steel has forfeited all claimed lien rights arising out the contract. To hold otherwise, would permit subcontractors to encumber unimproved property and excuse failures to perform the necessary amount of due diligence before filing a construction lien. Such an approach would frustrate the secondary purpose of the CLL and render the strict procedural requirements and associated penalties arbitrary.

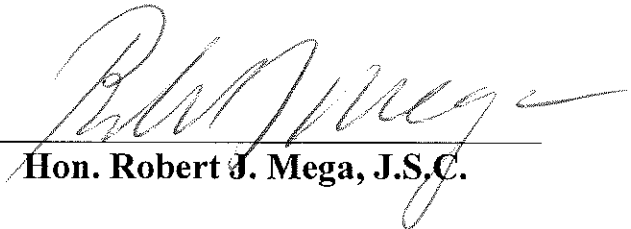
Based on the Court's ruling, there is no need to address Connell Hospitality's argument that the November 30, 2016 Construction Lien was willfully overstated.

The November 30, 2016 Construction Lien was lodged against "the real property of Connell Hospitality LLC [...] described as Block 4301, **Lot 1.12** (emphasis added) on the tax map of the Berkeley Heights, County of Union, State of New Jersey, and also known as 250 Connell Drive, Berkeley Heights, NJ 07922."

Conclusion

Accordingly, for the reasons set forth herein Connell Hospitality's motion is **GRANTED**. Ocean Steel's November 30, 2016 Construction Lien on 250 Connell Drive, Berkley Heights, NJ 07922 – Block 4031, Lot 1.12 is hereby discharged. Counsel for Connell Hospitality shall submit certification of services within ten (10) days of the date of this Order.

Dated: April 18, 2018



Hon. Robert J. Mega, J.S.C.