

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable Rudolph E. Greco, Jr.
Justice

IA Part 32

_____^x
SLSCO L.P. a/k/a SLS CO LTD,

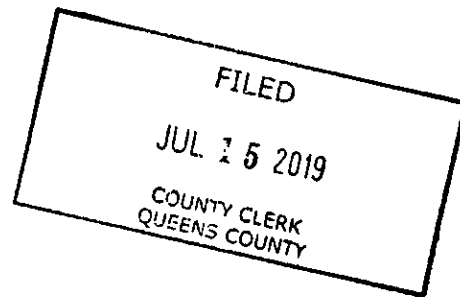
Index Number: 708514/2019
Motion Date: June 30, 2019
Motion Seq. No. 1
Motion Cal. No. 40

Petitioner,

-against-

URBAN ECOSPACES, INC.,

Respondent,



for an Order compelling production of Itemized Statements of Lien pursuant to Section 38 of the Lien Law,

_____^x
The following papers numbered E1 to E16 were read on this petition for an order pursuant to Lien Law §38 directing respondents to comply with petitioner’s demand for an itemized statement, or alternatively vacating and setting aside respondent’s mechanics lien.

	Papers <u>Numbered</u>
Notice of Petition, Verified Petition, Exhibits.....	E1-10
Verified Answer and Opposition.....	E11
Affirmation in Further Opposition.....	E14
Affirmation in Further Support.....	E15-16 ¹

Upon the foregoing papers, as well as conferences/oral arguments at the calendar call, it is ordered that this petition is decided as follows:

On or about March 22, 2019 respondent Urban Ecospaces, Inc. (“Urban”) filed Notices under Mechanic’s Lien Law against three separate properties in Far Rockaway, Queens. Urban was hired by petitioner SLSCO L.P. a/k/a SLS Co LTD (“SLS”) to provide electrical, plumbing, carpentry, HVAC and masonry services for the construction project involving the three properties. The construction project, the Build It Back Program, is one backed by the City of New York intended to assist homeowners who houses were damaged by hurricane Sandy. On April 26, 2019 SLS served separate demands upon Urban pursuant to Lien Law §38. Petitioner alleges that Urban failed to comply with the terms in the demand by not providing itemized statements.

Respondent opposed the petition arguing that is has already provided petitioner with the

¹The parties were permitted to submit additional documentation per conferences on the petition.

documents supporting its claims for labor and materials as derived by a system called Xactimate, and that the parties, in conjunction with the City of New York, were engaging in ongoing settlement conferences regarding costs for the program. Respondent maintains that this proceeding is frivolous, impractical and designed for the purposes of harassment.

Inasmuch as respondent's actions in filing the liens precipitated this proceeding, it cannot be frivolous and impractical. Petitioner is simply seeking that to which it is entitled under the law, and it appears that respondent failed to comply with such law. Arguing that you have furnished documents supporting the claims for labor and materials is insufficient in light of the language found in Lien Law §38, which provides certain criteria for the statement to be provided, including that it shall be verified, (*see* Lien Law §38; *see also DePalo v McNamara*, 139 AD2d 646 [2nd Dept. 1988]). Respondent fails to demonstrate that the documents supplied comport with this section. Further, the fact that settlement discussions were and are ongoing is of no import to the present request as, again, such request was provoked by the filing of the liens in the first instance. The scheduling, or the intent to schedule the conferences did not bar respondent from filing the liens, a right to which they are entitled, so same should not forestall petitioner from obtaining the itemized statements demanded.

To the extent that respondent made demands upon petitioner that petitioner allegedly failed to comply with, no relief can be awarded that was not properly requested.

In light of the above, petitioner's application is granted to the extent that it is hereby

ORDERED that respondents are directed to comply with the demand served upon them within ten (10) days of service of this Order with Notice of Entry, along with another copy of the demand at issue, upon them, which shall be within twenty (20) days of the date of entry hereof.

Failure to comply will result in an order vacating, setting aside and canceling the liens as per Lien Law §38.

Dated: _____, 2019

June 24

Rudolph E. Greco, Jr.
J.S.C.

