

**CPARE LLC v Trinchese Iron Works & Constr., Inc.**

2024 NY Slip Op 31198(U)

April 2, 2024

Supreme Court, New York County

Docket Number: Index No. 652820/2023

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

CPARE LLC

Plaintiff,

- v -

TRINCHESE IRON WORKS & CONSTRUCTION, INC.,

Defendant.

-----X

INDEX NO. 652820/2023

MOTION DATE 06/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10 were read on this motion to/for DISCHARGE/CANCEL MECHANICS LIEN

Upon the foregoing documents, it is

Petitioner, CPARE LLC, is seeking an order, pursuant to New York Lien Law § 38, compelling respondent, TRINCHESE IRON WORKS & CONSTRUCTION, INC. (“Trinchese”), to furnish a verified itemized statement in compliance with Lien Law § 38 in receipt of said order and providing that upon respondent’s failure to furnish such an itemized statement, issue an order cancelling and discharging the Mechanic’s Lien. For the reasons set forth below, the Verified Petition is granted in part.

Petitioner is the owner of the real property located at 619 East 6<sup>th</sup> Street, New York, New York 10009, Block 389, Lot 51 (“Property”). On or around February 17, 2021, Trinchese was hired by petitioner’s construction manager, The J360 Construction Co LLC (“J360”) to perform general contracting services for a project at the Property. Petitioner alleges that on or about June 22, 2021, respondent abandoned the project prior to substantial completion.

On November 22, 2021, respondent filed a mechanic’s lien (“Lien”) against the property in the amount of \$40,000.00 which remains due and owing. The Notice of Lien indicates that the

property is owned by petitioner, the respondent was employed by and contracted with J360, and that the labor and materials furnished were furnished and installed structural steel thereto. The Notice also indicates that the first item of material was furnished on March 7, 2021, and the last item of material was furnished on June 30, 2021. Finally, the Lien states that said materials were furnished for and used in the improvement of the real property described therein. An Extension of Mechanic's Lien was filed on or around October 19, 2022.

On April 26, 2023, in response to the Lien and pursuant to Section 38 of the Lien Law, petitioner served a demand for an itemized statement on respondent, which was delivered on April 28, 2023. The demand included that within five days of receipt of the demand, Trinchese furnish verified statements in writing setting forth the items of labor and/or material and the value thereof which make up the Lien amount of \$40,000.00 and a statement in writing to set forth the terms of the contract under which the materials were provided (*see* NYSCEF Doc. No. 3). Petitioner contends that respondent failed to comply with the demand as they failed to serve any statement in response to the demand and furnished an insufficient response by providing a copy of an invoice and contract via email (NYSCEF Doc. No. 5). Petitioner contends that respondent, upon an additional request for a verified statement of the specific labor and/or materials that form the basis of each claimed change order on the invoice, respondent provided an insufficient response (NYSCEF Doc. No. 6).

Under Lien Law § 38, once a demand for an itemized statement has been made by an owner or contractor, a lienor shall provide an itemized statement in writing which shall set forth the items of labor and/or material, the value of the material which make up the amount of the lien and set forth the terms of the contract under which such items were furnished (NY Lien Law § 38). Itemization is required only when it is necessary to apprise of the details of the lienor's

claim, such as when extra work and materials are claimed or when there is an underlying dispute involving the nature and value of the work performed (*Pineda v AB Painting & Const., Inc.* [NY Sup Ct, New York County 2015]; *Hudson Meridian Const. Group, LLC v ML Woodwork Inc.*, 2022 NY Slip Op 31886[U], 4 [NY Sup Ct, New York County 2022]; *Solow v Bethlehem Steel Corp.*, 60 AD2d 826, 826 [1st Dept 1978] *appeal dismissed* 46 NY2d 836 [1978]). The statement served by the lienor should set forth the description, quantity and costs of various kinds of materials and the details as to the nature of labor, time spent and hourly or other rate of labor charges (*Pineda v AB Painting & Const., Inc.* [NY Sup Ct, New York County 2015]; relying on *819 Sixth Ave. Corp. v T. & A. Assoc., Inc.*, 24 AD2d 446, 446 [1st Dept 1965]).

As the petitioner is disputing the nature and value of the work, claiming that respondent failed to substantially perform and/or abandoned the project in breach of the agreement, an itemized statement is required. While the response by respondent does include the signed construction contract agreement between respondent as sub-contractor and the petitioner's construction manager J360, and the proposal of the scope of work and materials, the additional forms and documents provided are not signed or dated. Additionally, the initial invoice provided by the respondent is insufficient as it includes lump sums and categories, lacks specifications for quantities of materials or breakdowns of labor, and fails to substantiate change orders. Further, the additional documentation respondent provided for two of the three claimed change orders are not signed and fail to establish that petitioner and/or its construction manager consented or approved such extra work or materials. The statement supplied by the respondent is not sufficiently itemized to permit the petitioner to check the claim, and therefore does not meet the requirements of Lien Law § 38 (*125 Broad CHP, LLC v Fine Craftsman Group, LLC*, 2023 NY

Slip Op 31549[U], 4 [NY Sup Ct, New York County 2023]; *Matter of DePalo v McNamara*, 139 AD2d 646, 646 [2d Dept 1988]).

The statute ultimately permits a court to cancel a lien if the lienor does not sufficiently comply with a court order requiring itemization (*Red Hook 160, LLC v 2M Mech., LLC*, 203 AD3d 932 [2d Dept 2022]). Cancellation may be ultimately warranted if the respondent should prove unable or unwilling to furnish the required statement (*see Matter of DePalo v McNamara*, 139 AD2d 646, 646 [2d Dept 1988]). Therefore, if respondent is unable or unwilling to comply with this decision and order, the petitioner may make the appropriate application, pursuant to Lien Law § 38, to cancel and discharge the Lien (*see In re Pizzarotti, LLC v Advanced Const. Equip. Corp.* [NY Sup Ct, New York County 2024]).

Accordingly, it is hereby

ORDERED and ADJUGED that the portion of the Verified Petition seeking to compel the respondent lienor, TRINCHESE IRON WORKS & CONSTRUCTION, INC., to provide the petitioner, CPARE LLC, with an itemized statement in compliance with Lien Law § 38, including sufficient detail as to the labor and materials claimed, is GRANTED and the respondent shall provide such statement in connection with the Mechanic's Lien filed November 22, 2021, and extended on October 19, 2022, against the real property located at 619 East 6<sup>th</sup> Street, New York, New York 10009, Block 389, Lot 51; and it is further

ORDERED and ADJUGED that respondent is directed to provide the appropriate itemized statement within twenty days of service upon respondent of this Decision and Order with notice of entry; and it is further

ORDERED that all remaining relief sought in the Verified Petition is DENIED.

This constitutes the decision and order of the court.

4/2/2024  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE