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Instrument: REPLY AFFIRMATION

Control #: 202402202679

Index #: E2024000703

Date: 02/20/2024

Time: 5:39:36 PM

Return To:  
James R. Caputo  
4278 Lafayette Rd  
Jamesville, NY 13078

Caputo, James R

Holt, Nathan  
Billet, Owen  
Premium Mortgage Corporation  
Houle, Robert T  
Houle Sales Consulting Inc

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



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

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**James R Caputo**

Plaintiff

**Index No.: E2024000703**

– vs –

**Nathan Holt, Owen Billet, Premium Mortgage Corporation, Robert T Houle, Houle Sales Consulting Inc, Donald Cheney Esq, Cheney Law Firm PLLC, ABAR Abstract Corporation, Monroe County Clerk’s Office**

**VERIFIED RESPONSE TO DEFENDANT’S ANSWER WITH CROSS CLAIMS**

Defendants

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Plaintiff James R. Caputo replies to the Answer With Cross Claims submitted to the Court in this action by attorney Kathryn E. Assini of Relin, Goldstein & Crane, LLP on behalf of Defendants Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation ("Answering Defendants"), and asserts the affirmative responses and relevant claims as follows:

**RESPONSE TO DEFENDANTS’ AFFIRMATIVE DEFENSES**

**First Affirmative Defense:**

“Cause of Action” is defined as - a fact or facts that enable a person to bring an action against another. Plaintiff has presented a material fact-based complaint that demonstrates the current homeowners (Nathan Holt and Owen Billet) being responsible for any lien inherited on the property they purchased. The mortgage company’s own paperwork makes this clear and in no uncertain terms. It has also been established that both Premium Mortgage Corporation and ABAR Abstract Corporation both were aware of the in-force mechanic’s lien on the property they financed and provided title insurance for respectively but chose to look past it. Therefore, Plaintiff has

indeed stated the specific causes of action against each of these three parties. Defense Counsel's affirmative defense that a cause of action was not made is incorrect and therefore must fail.

**Second Affirmative Defense:**

For jurisdictional purposes, corporations are considered legal persons. Additionally, a corporation is considered to be a citizen of both its state of incorporation and its principal place of business and will be subject to general jurisdiction in the state in which they maintain a principal place of business. Therefore, a company can properly be sued in the place of its incorporation and the location of its principal place of business. With both ABAR Abstract Corporation and Premium Mortgage Corporation doing business within Monroe County, they are subject to general jurisdiction pursuant to NY CPLR §301, with the current Court venue being proper. Thus, this affirmative defense must fail.

**Third Affirmative Defense:**

The mechanic's lien that was in-force when the property was unlawfully sold and thus implicating all three Defendants represented by Counsel is not defective, not improperly filed and not willfully exaggerated. Making such defenses, without any material basis in support, does not make it so. On the contrary, the Lien was duly filed with supporting documents, properly served, victorious when challenged, and fully in force when these Defendants chose to ignore it and the Lien Law from which it was empowered. This counsel is asking for a Mechanic's Lien that was filed completely in line with the law and upheld on Supreme Court Challenge on all counts (including any contention of being "willfully exaggerated") to now be canceled because he says so. Such an empty affirmative defense is not how cases are won and therefore it must fail.

**Fourth Affirmative Defense:**

Plaintiff filed a mechanic's lien extension on January 18, 2023, within one year of the original filing. All legal references pointed at this being the proper course of action for a soon to expire mechanic's lien. If there is a small provision in the law that required Plaintiff to obtain a Court Order extension rather than simply being able to file an extension on an already existing lien, then this should have been made clear to Plaintiff at the time of filing the extension. The Monroe County Clerk's Office is completely connected and adherent to the very statutes that govern all of these filing processes and therefore stood in a position to reject the lien extension if it was indeed being extended outside of what was allowed. Nevertheless, regardless of whether the Lien Extension was filed in full accordance with the law, that same mechanic's lien was fully operational and already upheld after Supreme Court Challenge, where specific instructions were given by the Judge as to the *only* way the property could be sold. All three of these Defendants chose to ignore the Court ordered restrictions directed at the sale of the subject premises and proceeded with the sale anyway while trampling on the lien. This affirmative defense must therefore fail.

**Fifth Affirmative Defense:**

The standing that Plaintiff possesses against the Defendants is the Lien Law having been violated, a Court Ruling having been ignored, a mortgage contract that assigns lien liability to the new homeowners, a mortgage company who admits that they knew about the lien on the property they financed, and a Title Insurance company also knowing about the restrictive instrument (the mechanic's lien) being on the property – as they all chose to thumb their collective noses to both the enforceability of the lien and to that which was rightfully owed to Plaintiff James R. Caputo. Therefore, this affirmative defense must too fail.

**Sixth Affirmative Defense:**

Defense Counsel states that Plaintiff's Causes of Action must be barred due to a *"failure to comply with one or more condition precedent"* but fails to name just what conditions were not met for this contention to apply. There was a duly filed mechanic's lien on the property that restricted it from being sold. The property was sold anyway with all parties aware of the lien. By selling the property out from under the lien, all parties were essentially forcing Plaintiff to file a Lien Foreclosure suit in order to rightfully recover his compensation for six months of contracted work which was spurned by Defendant Houle and Houle Sales Consulting, Inc, who were the previous owners of the premises. A Lien Foreclosure was in fact filed and now that all parties have been called to answer for their respective parts, they don't like it. All conditions for Plaintiff to be able to bring this suit have been met and therefore Defense Counsel's sixth affirmative defense must also fail.

**Seventh Affirmative Defense:**

The statute of limitations for filing a Lien Foreclosure is within two years of the initial filing date of the lien, so long as the lien is extended if suit is brought after one year. This is exactly what was done in this matter. Further, the statute of limitations for fraud and breach of contract is six years and three years for breach of fiduciary duty. Therefore, any affirmative defense that the Complaint is barred due to statute of limitations must fail.

**Eighth Affirmative Defense:**

Just as was made clear in Reply papers to Defendant(s) Donald Cheney, Esq and Cheney Law Firm, PLLC, both Defendants Premium Mortgage Corporation and ABAR Abstract Corporation had a fiduciary duty to Plaintiff by the Transitive Property of Equality (If A=B and B=C, then A=C). Each of these parties had a fiduciary duty to the property itself to not allow any

encumbrances to be present when transferring (ownership) deed and when financing the purchase thereof. They also had a specific duty to the new homeowners themselves to not place them at risk with an in-force mechanic's lien on the property that they would inherit if the sale and deed transfer took place. The property, in return, had a fiduciary duty to Plaintiff as the collateral means by which his mechanic's lien was empowered to be satisfied before any sale could take place. Therefore, by the transitive property of equality, both Premium Mortgage Corporation and ABAR Abstract Corporation had a fiduciary duty to Plaintiff to ***not*** allow or approve of that sale until such time as the lien was satisfied enough to be removed as a "cloud" on the property.

**Ninth Affirmative Defense:**

Defense Counsel for the four Defendants (Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation) asserts in this defense statement that Plaintiff James R. Caputo's damages were caused by (1) "***his own breach of contract***" (2) "***defective, incomplete and/or improperly performed services***", and therefore has "***unclean hands***" and consequently "***failed to mitigate its damages.***" Outside of Counsel simply making these claims, he offers up zero material basis for them. On the contrary, Plaintiff has submitted to this Court the following: (1) The signed contract between Plaintiff and Houle Sales Consulting, Inc, along with a Final Invoice (once all work was complete), both of which spelled out the work performed in detail. (2) Multiple pictures demonstrating the high level of completed work and several communications between Plaintiff and Defendant Houle where he was pleased with Plaintiff's services, while zero material proof has been submitted by any party that establishes "***defective, incomplete and/or improperly performed services.***" Plaintiff did everything he promised to do and then some. Plaintiff gave Defendant Houle months and months and many opportunities to avoid any of this. Plaintiff then successfully defended his lien in Supreme Court. Plaintiff has played his rightful

position in this whole matter by the books with his efforts to be paid for services provided. My hands are as clean as they could possibly be, with zero material proof before this Court from any Defendant that speaks otherwise. So again, this affirmative defense must therefore fail.

**Tenth Affirmative Defense:**

Defense Counsel is partially correct. Admittedly, the damages *“sustained by Plaintiff were caused by the acts and/or omissions of third-parties.”* There were several parties involved in the illicit sale of the subject premises. And yes, while four of the parties, (Robert T. Houle, Houle Sales Consulting, Inc., Donald Cheney, Esq. and Cheney Law Firm, PLLC), are indeed “third parties” to Defendants Holt, Billet, Premium Mortgage Corp. and ABAR Abstract Corp., these latter four defendants are also named in the Complaint as having also committed *acts and/or omissions* in this matter, which is why they are all named in the Complaint and stand as culpable. Therefore, Defense Counsel’s tenth affirmative defense must therefore fail.

**Eleventh Affirmative Defense:**

If the *“Answering Defendants possess a defense based upon documentary evidence”*, they offered up no such evidence as part of their affirmative defense in the matter, while simultaneously asking the Court to dismiss the case against them. Conversely, Plaintiff not only possesses a Complaint based upon documentary evidence, but he has also submitted it to this Court to prove it. Included in this evidence is the mortgage contract demonstrating the new homeowners being the inheritors of Plaintiff’s mechanic’s lien, testimony that Premium Mortgage Corp. knew about the lien, documented evidence that ABAR Abstract Corp. knew about the lien and wrote Title Insurance for the subject premises anyway. Therefore, absent any real documentary evidence so claimed by Defense Counsel, this affirmative defense must also fail.

**Twelfth Affirmative Defense:**

Plaintiff has no objection to this statement by Defense Counsel as a means of making available other potential defenses in the future pending material or information obtained on discovery. Plaintiff maintains this very same position.

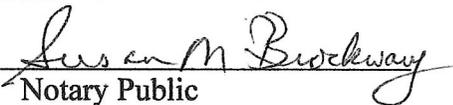
Defense Counsel's Cross Claims against Defendants Robert T. Houle, Houle Sales Consulting, Inc. Donald Cheney, Esq and Cheney Law Firm, PLLC are a separate matter for the Court to decide. Plaintiff has no specific reply otherwise.

WHEREFORE, for the foregoing reasons, Plaintiff James R. Caputo respectfully requests that this Court: (a) **deny** the request for Plaintiff's Complaint to be dismissed against Defendants Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation; There has been no formal motion made to this Court for dismissal. This late paper request for dismissal was made as part of an Answer paper, which has been suitably opposed nonetheless in this paper; (b) grant the Defendants in this Reply paper whatever indemnification and judgment that the Court determines to be appropriate after trial against Defendants Robert T. Houle, Houle Sales Consulting, Inc. Donald Cheney, Esq and Cheney Law Firm, PLLC; (c) grant the Defendants in this Reply paper whatever contribution and judgment that the Court determines to be appropriate after trial against Defendants Robert T. Houle, Houle Sales Consulting, Inc. Donald Cheney, Esq and Cheney Law Firm, PLLC, so long as Plaintiff recovers his damages in full; and that the Court grant such other and further relief as it may deem proper and just.

**VERIFICATION**

I, James R. Caputo, being duly sworn, say: I am the Plaintiff in the above-named proceeding and that the foregoing Verified Response and submitted evidence were prepared by me, and are true to my own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe it to be true.

Sworn to before me this  
20 day of February, 2024

  
Notary Public

SUSAN M. BROCKWAY  
Notary Public, State of New York  
Qualified in Onondaga County  
Commission Number 4995943  
My Commission Expires 5/4/20 26

  
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