

PART 23

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

| | |
|---------------------|--------------------------|
| Case Disposed | <input type="checkbox"/> |
| Settle Order | <input type="checkbox"/> |
| Schedule Appearance | <input type="checkbox"/> |

RIVERVIEW REDEVELOPMENT

Index No. 0029850/2017

-against-

Hon. JOSEPH CAPELLA,

D & D ELEVATOR MAINTENANCE

Justice Supreme Court

The following papers numbered 1 to 3 Read on this motion, **DISCHARGE/CANCEL MECHANIC LIEN**
Noticed on **December 06 2017** and duly submitted as No. _____ on the Motion Calendar of _____

| | PAPERS NUMBERED | |
|---|-----------------|--|
| Notice of ^{Petition} Motion - Order to Show Cause - Exhibits and Affidavits Annexed | ① | |
| Answering Affidavit and Exhibits | ② | |
| Replying Affidavit and Exhibits | ③ | |
| _____ Affidavits and Exhibits | | |
| Pleadings - Exhibit | | |
| Stipulation(s) - Referee's Report - Minutes | | |
| Filed Papers | | |
| Memoranda of Law | | |

Upon the foregoing papers this petition seeking an order vacating, cancelling and discharging the lien at issue is granted.

A lien may be vacated only as authorized by Lien Law § 19(6). Here, the Notice of Mechanic's Lien is facially valid and the parties dispute whether it was filed within the required eight months. If a lien is valid on its face, any dispute regarding its validity, including its timeliness must be determined at a trial on the lien. (*Matter of Taocon, Inc. v Urban D.C. Inc.*, 110 AD3d 423 [1st Dept 2013].) Additionally, petitioner argues that the Lien was not properly served upon it at its last know place of business as required by Lien Law § 11. The record demonstrates that the Lien was served upon petitioner by certified mail to addresses on file with the Office of the City Register of the City of New York. Respondent avers that it was not aware of petitioner's Teaneck, NJ address as petitioner updated its New York Secretary of State Certificate of Limited Partnership months after the Lien was filed and because it corresponded with an entity of a different name at the Teaneck address, it therefore had no reason to conclude that petitioner and said entity were one and the same. "Pursuant to Lien Law § 11, a party is required to serve a notice of lien on a corporation by one of three specified methods. Strict compliance with the statutory requirements is mandated and the court does not have discretion to excuse noncompliance." (*HMB Acquisition Corp. v F & K Supply*, 209 AD2d 412 [2nd Dept 1994].) Accordingly, the petition seeking an order vacating, cancelling and discharging the lien at issue, is granted and D&D Elevator Maintenance Inc. mechanic's lien is discharged.

Petitioner shall serve a copy of this decision/order with notice of entry by first class mail upon respondent within 30 days of receipt of same. This constitutes the decision and order of this court.

Dated: 2 / 16 / 18

Hon. 
JOSEPH CAPELLA, J.S.C.

Motion is Respectfully Referred to:

Justice:

Dated: