

SHORT FORM ORDER

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

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X **TRIAL/IAS PART 13**

**In the Matter of the Application of
ELIYOW SHILIAN and RENAT SHILIAN,**

INDEX # 601994/16

Petitioner(s),

Mot. Seq. 1,2

Mot. Date 4.18.16

Submit Date 5.2.16

**For an order pursuant to Lien Law Section 19
discharging and vacating a certain Notice of Mechanic's Lien
filed by ALL SONS ELECTRIC CORP. against the real
property located at:
616 Derby Avenue
Woodmere, New York, also known as
Section 39, Block 627, Lot 16**

-against-

ALL SONS ELECTRIC CORP.,

Respondent(s).

-----X

The following papers were read on this motion:

Papers Numbered

Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1,2
Answering Affidavit	3
Reply Affidavit.....	3,4

Petitioners move to vacate a mechanic's lien filed on November 21, 2014. Respondent cross-moves for leave to file an extension of the mechanic's lien *nunc pro tunc* pursuant to Lien Law Section 17.

Petitioners are the owners of the premises known as 616 Derby Avenue, Woodmere, New York. On or about November 21, 2014, respondent filed a mechanic's lien in the sum of \$13,055.00 against the aforesaid premises. On or about November 9, 2015, respondent filed an

extension of mechanic's lien. However, respondent neglected to obtain the permission of the court during the required time prior to the filing of the extension.

Pursuant to Lien Law Section 17, a mechanic's lien expires one year after filing unless an extension is filed with the County Clerk or an action is commenced to foreclose the lien within that time and a notice of pendency is filed in connection therewith (*see MCK Bldg. Assoc. v. St. Lawrence Univ.*, 5 AD3d 911, 912 [3d Dept 2004]). In the event neither of these conditions is accomplished within the statutory period, nor is a further extension of the lien obtained by order of the court, the lien automatically expires by operation of law, becoming a nullity and requiring its discharge (*see Matter of Cook v. Carmen S. Pariso, Inc.*, 287 AD2d 208, 211 [4th Dept 2001]).
Aztec Window & Door Mfg., Inc. v. 71 Vill. Rd., LLC, 60 AD3d 795, 796 (2d Dept. 2009).

Applying these principles, the court cannot extend *nunc pro tunc* the time to file an extension of a mechanic's lien unless respondent filed a timely notice of pendency or moved to extend the time within the one year period (*Id.*). It is undisputed that a timely court order was not obtained; however, an extension of the mechanic's lien was filed at the Office of the County Clerk on November 9, 2015 within the one year period. The records of the Nassau County Clerk reveal that an extension of the mechanic's lien was filed on November 9, 2015 and the fee was paid.

Respondent cites the case of *Navillus Tile, Inc v LC Main, LLC* (98 AD3d 979 [2d Dept. 2012]) where the contracting company filed an ex-parte application for an extension of the mechanic's lien timely with the clerk of the court; however, the petition was not received by a justice of the court for signature until after the expiration date of the lien. The appellate court stated that the trial court

“did possess the power to grant the petitions extending the term of the liens *nunc pro tunc*. Nothing in the text of Lien Law § 17 prohibits the granting of an application for an extension of the term of a lien where the application is timely filed but not presented to a judge or justice until after the expiration date (*see Makovic v. Aigbogun*, 41 AD3d 342 [1st Dept 2007]). Although, in denying the petitions and adhering to its prior determinations, the Supreme Court relied on *Matter of Binghamton Masonic Temple v. Armor El. Co.*, 186 AD2d 338 [2d Dept 2012] and *Contelmo's Sand & Gravel v. J & J Milano*, 96 AD2d 1090 [2d Dept 1983], those cases are distinguishable, as they did not squarely address the issue presented in this case. Since the granting of the petitions *nunc pro*

tunc is not ‘otherwise expressly prescribed by law, the court may extend the time fixed by [Lien Law § 17] upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed’ (CPLR 2004).” (98 AD3d 979)

CPLR 2004 provides that “[e]xcept where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.” N.Y. C.P.L.R. 2004 (McKinney). The statute requires the movant to demonstrate good cause. Petitioner argues that Lien Law 19 (2) when read in conjunction with Lien Law 17 voids the lien as a matter of law. Further, once the lien has elapsed, any order purporting to continue such lien is void and would have no effect. Lien Law Section 19 (2) provides in relevant part that by failure to secure an order to continue the lien in the office where it is filed within one year from the time of filing, the notice of lien shall terminate as a lien after such notice has been cancelled or has ceased to be effective as constructive notice.

It is interesting to note that although the facts in *Navillus* 98 AD3d 979 are dissimilar to the facts in this case, the Appellate Division stated, under certain circumstances, the trial court has the power to extend the lien *nunc pro tunc*. The question to be determined is whether under this factual circumstance an order should be entered *nunc pro tunc* to extend the mechanic’s lien. Unlike *Aztec Windows and Door Mfr, Inc.* (60 AD3d 795) where the contractor failed to do anything within the one year period, here, the contractor did affirmatively file an extension within the one year period which was accepted by the Nassau County Clerk. A request for an extension can be made to the court for an order *ex parte* and the statute does not require notice (see, *Navillus Tile, Inc.*, 98 AD3d 979; see also *Matter of Binghamton Masonic Temple, Inc.*, 186 AD2d 338).

Michael Zangari, the president of respondent corporation states in an affidavit that Redemption Assset Management, LLC, the firm that filed the original mechanic’s lien, failed to advise him that since the premises was a single family residence he was required to obtain a court order to authorize the extension. He only first learned of this mistake when he was served with the order to show cause. He argues that if the order was brought to the court timely the application would have been granted. There is certainly no prejudice to the petitioner.

“CPLR 2004 provides, in pertinent part, that ‘the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown’ (CPLR 2004). In addition to the statutory authority, a court has authority under the common law, in its discretion, to grant relief from a judgment or order in the interest of justice, taking into account the equities of the case and the grounds for the requested relief (see *Hodge v Development at Helderberg Meadows, LLC*, 114 AD3d

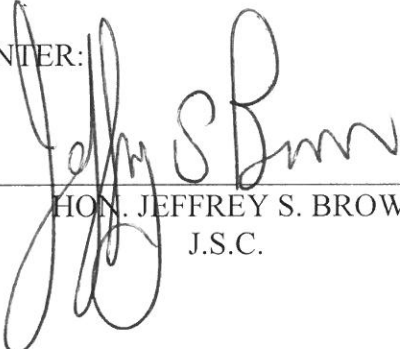
1122 [3d Dept 2014]; *Hoo Corp. v 109 Graham Ave. Corp.*, 288 AD2d 266, 267 [2d Dept 2001].”
Mochkin v. Mochkin, 120 AD3d 776, 778 (2d Dept. 2014).

In this case, the court finds good cause has been demonstrated, and the granting of such relief is just under this factual circumstance. The contractor filed an extension document and paid the requisite fee within the one year period prior to the expiration of the initially filed mechanic’s lien. A court order extending a mechanic’s lien would normally be routinely granted. There is no prejudice to the petitioners in granting the relief requested by the respondent.

Accordingly, the cross-motion is **granted**, and it is ordered that the previously filed mechanic’s lien is filed *nunc pro tunc* as of November 9, 2015, and the motion is **denied**.

This constitutes the decision and order of this court.

Dated: Mineola, New York
May 9, 2016

ENTER: 
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J.S.C.

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ENTERED

MAY 13 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE