

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

----- TRIAL/IAS, PART 13
NASSAU COUNTY

DAME CONTRACTING INC.,

Plaintiff,

MOTION DATE:

March 8, 2000

INDEX No. 31154/98

-against-

SEQUENCE No. 1, 2, 3, 4, 5

CVA GENERAL CONTRACTORS, INC.,
W&S ASSOCIATES, LP., KEY BANK
NATIONAL ASSOCIATION, LEGITIMATE
SHEET METAL CORP., 3 SIXTY INC.,
CANNON CONSTRUCTION COMPANY, INC.,
J.C. STEEL CORPORATION, BLACK HAWK,
INC., P.R. PAINTING CORP., PREMIER
CONSTRUCTION, INC. BRENNAN, BEER,
GORMAN, MONK/INTERIORS INC., APOLLO
HVAC CORP., PRECISION ACRE, INC.,
RCM CORPORATION, NORTHGATE ELECTRIC
CORP.,

Defendants.

W.H.M. PLUMBING & HEATING CONTRACTORS,
INC. AND NORTH SHORE NEON SIGN CO., INC.,
"JOHN DOE #1 Through #20", inclusive,
the last names being fictitious and
unknown to plaintiff, such persons
intended to be tenants, occupants,
persons or corporation, if any,
having or claiming an interest in or
lien upon the premises described in
the complaint,

Additional Defendants.

The following papers read on this motion:

Notice of Motion and Supporting Papers (Defendant Northgate Electric Corp.)
Notice of Motion and Supporting Papers (W.H.M. Plumbing)
Notice of Cross-Motion and Supporting Papers (CVA General Contractors, Inc.)
Notice of Cross-Motion and Supporting Papers (CVA General Contractors, Inc.)
Affidavit of Mark Collins
Affirmation (June Connolly)
Notice of Motion and Supporting Papers (Northgate Electric Corp.)

Motions by (1) defendant Northgate Electric Corp. (a) pursuant to CPLR 3212 for summary judgment on its cross claim against CVA General Contractors, Inc. and (b) pursuant to CPLR 510 (3) to retain venue in Nassau County; (2) defendant W.H.M. Plumbing Contractors, Inc. pursuant to CPLR 3211 (a)(7) or 3212 for an order (a) dismissing defendant CVA's answer and affirmative defenses, (b) granting W.H.M. Plumbing Contractors, Inc. summary judgment on its cross claim against CVA, and (3) by Defendant CVA General Contractors, Inc. for an order (a) dismissing the action pursuant to CPLR 3211 on the grounds that the court lacks subject matter jurisdiction, (b) transferring the matter to Bexar County , Texas pursuant to CPLR 501 and 510(2), (c) granting CVA leave to amend its answer to include the defense of lack of subject matter jurisdiction, (d) denying the motions of Northgate Electric Corp. and W.H.M. Plumbing Contractors, Inc. for summary judgment against CVA on the grounds that questions of fact exist, (e) granting

attorney's fees and costs and (f) for other relief are all hereby denied.

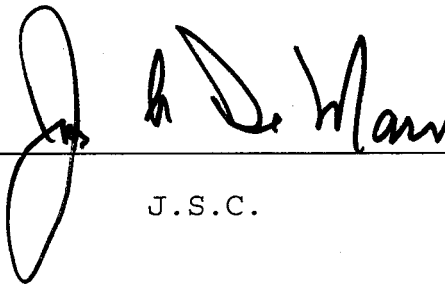
This action was filed by Dame Contracting, Inc., a sub contractor, to foreclose a mechanic's lien arising out of construction work done at The Source Mall in Westbury, New York in 1998. Plaintiff named the general contractor, CVA General Contractors, Inc., (which was contracted by the owner to procure the needed labor and materials) as well as the other lienors, including the above mentioned cross-claiming co-defendants, the lessor and the owner of the premises as parties to the action. The other lienors, also subcontractors, cross claimed against CVA, the general contractor. Since no cross claims were made against the lessor or the owner, the court can only assume that the general contractor has been paid under its contract with the owner. In any event, on October 19, 1999, subsequent to the making of the instant motions, CVA General Contractors, Inc., a Texas corporation, filed for bankruptcy in the United States District Court for the Western District of Texas.

Under 11 USC 362 (a) the filing of a bankruptcy petition stays:

(1) "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title."

This stay applies to efforts to enforce a mechanic's lien which are not excepted from the stay. (See 11 USC 362(b)(3).) In order to proceed with this action, a motion must be made to the bankruptcy court for an order lifting the automatic stay. (See 11 USC 362(d); In Re Richardson Builders, Inc., 123 BR 736.) It is the court's understanding that no such application has yet been made, or, if made, been granted. Therefore, the proceedings are automatically stayed unless and until the bankruptcy court issues such an order.

The motions for the various forms of relief requested herein are accordingly denied.



J.S.C.

Dated: May 4, 2000