

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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**LIENOR CORP.,** :  
:   
Plaintiff, :   
:   
-against- :   
:   
**CONTRACTOR CORP., PRINCIPAL OF DC,** :   
**OWNER CORP., NEW YORK CITY** :   
**ENVIRONMENTAL CONTROL BOARD,** :   
**OTHER CONTRACTOR CORP, INC.,** :   
and **ANOTHER CONTRACTOR CORP,** together with :   
“JOHN DOE NO.1” through “JOHN DOE NO. 10”, :   
“MARY ROE NO.1” through “MARY ROE NO. 10” :   
“XYZ CORP. NO 1” through “XYZ CORP. NO. 10” and :   
“ABC LLC NO. 1” through “ABC LLC NO. 10” inclusive, :   
the names being fictitious and unknown to plaintiff, such :   
persons and/or entities being intended to be those persons :   
and/or entities with an interest in the real property :   
located at , Brooklyn, City and State :   
of New York, County of Kings Block No. , Lot No. :   
:   
Defendants. :   
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Index No.:  
Purchased:  
  
**COMPLAINT**

Plaintiff, by its attorneys, SHANKER LAW GROUP, complaining of the defendants above-named, respectfully shows to this court and alleges as follows:

**THE PARTIES**

1. That the plaintiff, **LIENOR CORP.** is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.
2. Upon information and belief, defendant **CONTRACTOR CORP.** (“DEBTOR CORP”) is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

3. Upon information and belief, defendant **PRINCIPAL OF DC** (“Principal of DC”) was and is a resident of the State of New York.

4. Upon information and belief, defendant **OWNER CORP.** (“Owner Corp.”), is domestic corporation duly organized and existing under and by virtue of the laws of a State other than New York.

### **FACTS**

5. Upon information and belief, at all times relevant to the Complaint, Owner Corp. was and/or still is the owner of the land and premises located at \_\_\_\_\_, Brooklyn, New York designated on the tax map as Block \_\_\_\_\_, Lot \_\_\_\_\_, County of Kings (the “Property”).

6. Upon information and belief, in connection with the development of the Property, **DEBTOR CORP** entered into a contract with Lienor Corp. by which Lienor Corp. was to perform certain work and/or provide materials in connection with the construction of a new building (“Project”) at the Property.

7. Lienor Corp. duly performed fully and completely all work under the scope of the contract.

8. The materials furnished by Lienor Corp. were for the improvement of the Project and were furnished for and actually used and incorporated in and about the construction and improvement of the Project with the knowledge, consent, and at the request of Owner Corp..

9. By reason of the foregoing, Lienor Corp. became entitled to payment for the agreed price and reasonable value of its work and/or materials on the Project in the amount of \$ \*\*\*.\*\*.

10. In breach of its obligations under the contract, **DEBTOR CORP** failed, refused and/or neglected to pay to Lienor Corp. the full amount due and owing for the work and/or materials furnished at the Project.

11. The sums due to Lienor Corp. are on account of the work and/or materials furnished and supplied by Lienor Corp. for which the benefit was retained by Owner Corp., and all of said material was actually used and incorporated in connection with the construction of the Project.

12. Payment has been duly demanded but DEBTOR CORP has failed and refused to remit same. DEBTOR CORP was actually indebted to Lienor Corp. for said sum at the time of the filing of the Notice under Mechanic's Lien Law hereinafter referred to herein.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Lienor Corp.'s Lien Foreclosure)**

13. On or about August 11, 2010, and within eight months after final performance of the furnishing of material, dating from the last item of materials furnished, Lienor Corp. caused to be filed in the Office of the Clerk of Kings County, and the same was duly entered and docketed therein, a Notice under Mechanic's Lien Law, in the sum of \$ \*\*\*.\*\* (hereafter "Lienor Corp. Mechanic's Lien") in due form.

14. The Lienor Corp. Mechanic's Lien was duly served and Proof of Service of said Mechanic's Lien was duly filed in the Office of the Clerk of Kings County.

15. Upon information and belief all defendants have or claim to have some interest in or lien upon the Premises, which interest or lien, if any, is subsequent and subordinate to plaintiff's lien.

16. Upon information and belief, defendant **Owner Corp.** is the owner in fee of the Premises.

17. Upon information and belief, defendant **ANOTHER CONTRACTOR CORP** is a mechanic's lienor upon the Premises.

18. Upon information and belief, defendant **OTHER CONTRACTOR CORP, INC.**

is a mechanic's lienor upon the Premises.

19. Upon information and belief, defendant **NEW YORK CITY ENVIRONMENTAL CONTROL BOARD** is a possible judgment creditor upon the Premises.

20. Plaintiff has no knowledge of any other subsequent liens or claims against the Premises.

21. Plaintiff is entitled to equitably foreclose its Lien.

22. The Lienor Corp. Mechanic's Lien has not been paid, and no other action or proceeding at law or in equity has been brought by Lienor Corp. for the foreclosure thereof.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Lien Law Article 3-A Trust Fund Violation)**

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "22" of this complaint as if set forth at length herein.

24. Upon information and belief, defendant Owner Corp. made construction payments to DEBTOR CORP in connection with the Project for labor, materials and equipment furnished by contractors, subcontractors and/or suppliers, but upon information and belief, DEBTOR CORP failed to pay over said sums to contractors, subcontractors and/or suppliers.

25. Said moneys transferred to and received by DEBTOR CORP constituted trust fund assets within the meaning of New York Lien Law Article 3-A, and were required to be held and applied for the payment of the cost of said Project and for the payment of expenditures arising out of the Project and for the benefit of all persons, firms and corporations furnishing and supplying labor, materials and equipment for and to the Project.

26. Upon information and belief, defendant DEBTOR CORP received trust assets and/or diverted trust assets in violation of New York Lien Law, Article 3-A.

27. Upon information and belief, defendant Principal of DC received trust assets and/or diverted trust assets in violation of New York Lien Law, Article 3-A.

28. Upon information and belief, defendant DEBTOR CORP knowingly diverted trust assets in violation of New York Lien Law, Article 3-A.

29. Upon information and belief, defendant Principal of DC knowingly diverted trust assets in violation of New York Lien Law, Article 3-A.

30. Upon information and belief, defendant DEBTOR CORP consented to the diversion of trust assets in violation of New York Lien Law, Article 3-A.

31. Upon information and belief, defendant Principal of DC consented to the diversion of trust assets in violation of New York Lien Law, Article 3-A.

32. One year has not elapsed since the completion of the Project.

33. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff Lienor Corp. Corp. demands judgment as follows:

A. On the First Cause of Action,

- (i) adjusting and determining the equity of all the parties to this action and determining the validity, extent and priority of each and all of the liens and claims which may be presented and asserted herein;
- (ii) adjudging that Lienor Corp., by filing and causing the docketing of its Mechanic's Lien aforesaid, acquired a good and valid lien upon the interests of Owner Corp., as owner of the Property hereinabove described, and Lienor Corp., as contractor, for the agreed and reasonable value of the work performed to construct the improvements hereinabove described in the sum of \$ \*\*\*.\*\*, with interest thereon, together with the costs and disbursements of this action and adjudging that said Mechanic's Lien has priority over other claims of the defendants against the Property;
- (iii) that all other persons be forever foreclosed of all equity of redemption or other lien, claim or interest in and to the said Property;

(iv) that the Property described be sold, as provided by law, and that out of the proceeds of such sale, Lienor Corp. be paid the amount of its lien aforesaid and interest thereon, with the expenses of the sale and the costs and disbursements of this action; and that Lienor Corp. have judgment for any such deficiency that may remain after such payment against Lienor Corp.;

B. On the Second Cause of Action, judgment against defendants DEBTOR CORP and Principal of DC, jointly and severally, as follows:

compelled to

(i) That the defendants DEBTOR CORP and Principal of DC be compelled to discover and disclose all transactions between them herein with reference to the Project hereinbefore described, including a statement of all moneys held or paid on account thereof, and if paid, to whom paid, and the time or times of such payments;

(ii) That the defendants DEBTOR CORP and Principal of DC be discover, disclose, account for and pay over all sums of money held or received by each, on account of said Project, and account for the disposition of any such sums of money disposed of and also all and singular the place or places, property and assets of every kind and nature into which the said sums or any part thereof are traceable;

(iii) That it be determined that plaintiff is entitled to receive so much of said trust funds as will satisfy their claims hereinbefore referred to, with interest;

(iv) That this Court take such proceedings as may be necessary to bring before it and under its control all of such trust funds and all property of every name and nature into which the same may have been diverted, and distribute the same among all parties and persons entitled thereto, and in connection therewith to award the recovery to plaintiff Lienor Corp. the sum of \$ \*\*\*.\*\*, with interest;

(v) That plaintiff has the expenses of this action, including attorneys fees;

C. For such other and further relief as this Court deems just and proper.

Dated: Mineola, New York  
\_\_\_\_\_, 2010

Yours, etc.,

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Michael L. Shanker, Esq.

**SHANKER LAW GROUP**  
— ATTORNEYS & COUNSELLORS —

*Attorneys for Plaintiff*

*Office & P.O. Address*

101 Front Street

Mineola, New York 11501-4402

*Tel. 516.741.4000*

Our File #: