SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----------X

_____,

Plaintiff,

-against-

_____,

Defendants.

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VERIFIED COMPLAINT TO FORECLOSE A PUBLIC IMPROVEMENT LIEN

Index No. _____

Plaintiff, _____, by its attorneys, _____, complaining of the defendants, hereby alleges:

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS

1. At all times hereinafter mentioned, plaintiff, _____ was and is a domestic corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at [Address].

2. Upon information and belief, at all times hereinafter mentioned, defendant, _____ was and is a domestic corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at [Address].

3. Upon information and belief, at all times hereinafter mentioned, defendant _____ was and is a domestic corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business located at [Address] and is authorized by the Superintendent of the Department of Insurance of the State of New York to issue surety bonds.

4. Upon information and belief, on or about [date], defendant _____ entered into a contract with defendants, _____ and _____, by which, for the consideration set forth therein, _____ agreed to supply all labor and material sufficient to perform work on a public improvement project for the reconstruction of a portion of _____, Project No. _____. Plaintiff begs leave to refer to said contract for

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all its terms and conditions as if the same were set forth fully and in their entirety herein, as the same will be produced upon the trial of this action.

5. Thereafter, on or about [date], plaintiff and defendant _____ entered into a purchase order (hereinafter the "Purchase Order"), under and by which plaintiff agreed to provide all gasoline, oil and other petroleum products required to be used or consumed by _____ in the work to be performed by _____ under its contract with defendants _____ and _____.

6. Thereafter, between [date], and [date], plaintiff delivered such petroleum products as ordered by defendant _____ for said defendant's consumption and use on the project.

7. Upon information and belief, defendant _____, after the making of its contract with _____ and _____, entered upon the performance of same and at the time of filing of plaintiff's lien, as hereinafter set forth, had duly performed and had so far completed the same as to become entitled to a payment on account thereof, and at that time were monies due and owing to defendant _____, being held and under the control of defendant, _____ and _____, said monies being in excess of the amount of the claim of plaintiff as hereinafter set forth.

8. The total amount due and owing to plaintiff under its Purchase Order with defendant _____ for materials sold and delivered is the sum of _____ dollars ($_____), of which plaintiff had been paid or has credited the sum of _____ dollars ($_____), leaving a balance due and owing of _____ dollars ($_____), no part of which has been paid although duly demanded.

9. That the materials furnished by the plaintiff were actually provided for and used and consumed in the construction of the public improvement hereinbefore described, pursuant to the contract as aforesaid, between defendant _____ and defendants, _____ and _____.

10. That on or about the _____ day of _____, ____, pursuant to the provisions of the Lien Law (Lien Law § 12 as amended), plaintiff caused to be timely filed in the offices of the Comptroller of the State of New York, the chief financial officer of the State and the Commissioner of the Department of Transportation of the State of New York, the head of the department having charge of the work under the aforesaid contract, a notice of mechanic's lien on account of a public improvement in due form in the amount of $_____, being the amount owed to plaintiff as aforesaid, against the interest of defendant _____ in monies due or to become due under the contract between _____ and defendants, _____ and _____, as aforesaid. A true and correct copy of said lien is annexed hereto as Exhibit A and plaintiff begs leave to refer to same as if set forth fully and in its entirety herein.

Sample

11. Pursuant to Lien Law § 11-c[1] simultaneously with the filing of said notice of lien, in accordance with Section 12 of the Lien Law, plaintiff served a copy of said notice of public improvement lien by certified mail, return receipt requested, on _____ [the contractor, subcontractor or person employed or to whom it furnished materials].

12. Neither the said lien, nor plaintiff's claim thereunder, has been waived or discharged, in whole or in part, except that, by Order of this Court, made and entered the _____ day of _____, ____, and the filing of the undertaking as hereafter alleged, said lien was discharged. No action has been taken and no proceedings have heretofore been instituted for the foreclosure or enforcement of said lien, or for the recovery of the amount claimed to be due plaintiff, or for any part thereof.

13. Upon information and belief, at the time of the filing of the mechanic's lien of plaintiff as aforesaid, there was due and owing, or to become due, from the defendants, _____ and _____, to defendant _____ under the contract as aforesaid, a sum in excess of $_____, the amount of plaintiff's lien herein.

14. Subsequent to the filing of the Notice of Lien as alleged above, an Order was made on the _____ day of _____, ____, by the Hon. _____, fixing the sum of $_____ as the amount of the undertaking to be given to discharge plaintiff's mechanic's lien. Thereafter, an undertaking in the amount of $_____ was duly executed by defendant _____, as principal, and defendant _____, as surety, dated the _____ day of _____, ____. Said undertaking complied in all respects with the requirements of the Lien Law, and was duly approved in form and substance by the Hon. _____, a Justice of this Court; and by Order made and entered on the _____ day of _____, ____, plaintiff's lien as alleged above was duly directed to be discharged by reason of the filing of said undertaking and said lien was thereupon discharged. By reason thereof, said surety, defendant _____, is liable for any sum which may be adjudged in this action to be due and owing upon the lien above mentioned.

15. Upon information and belief, no other parties have or claim to have any lien or interest in or upon the funds due or to become due under the aforesaid contract.

16. Based upon the foregoing, plaintiff is entitled to recover judgment against defendant _____ by virtue of its undertaking given to discharge the above lien in the sum of $_____ plus interest.

Sample

[1] Always review the statute. Also, a lienor having a direct contract relationship with a subcontractor or sub-subcontractor but not with a contractor shall also serve a copy of the lien by certified mail, return receipt requested, to the contractor. Proof of service should be affixed or attached to the lien. Failure to file proof of service shall render the notice of lien a nullity.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, _____

17. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered 1 through 16 as if the same were set forth fully and in their entirety herein.

18. Plaintiff duly produced and delivered all material required by its Purchase Order with defendant _____, and said material was duly accepted and consumed by defendant _____.

19. As a result of the foregoing, there is due and owing to plaintiff from defendant _____ pursuant to the Purchase Order between the parties, the sum of $_____. Defendant _____ has breached said agreement by failing and refusing to pay said amount, except for the sum of $_____, either paid or otherwise credited by plaintiff, leaving a balance due and owing from defendant _____ to plaintiff in the amount of $_____, no part of which has been paid although duly demanded.

AS AND FOR A THIRD SEPARATE CAUSE OF ACTION
AGAINST DEFENDANT _____

20. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered 1 through 19 as if the same were set forth fully and in their entirety herein.

21. Plaintiff sold and delivered the materials as aforesaid to defendant _____, and defendant accepted same, all in the amount of $_____. The said materials and the reasonable value or agreed price thereof for which plaintiff has not been paid, are set forth in Exhibit B attached hereto.

22. Plaintiff has been paid by _____ or has otherwise credited _____ the sum of $_____, leaving a balance due and owing of $_____, no part of which has been paid although duly demanded.

WHEREFORE, plaintiff _____ prays for judgment:

1. On the cause of action against defendants, _____, _____, _____ and _____:

(a) Adjudicating that its claim is a valid lien to the extent of $_____ with interest upon monies due or to become due from defendants, _____ and _____ to defendant _____ under and by virtue of the contract for said project;

Sample

(b) Adjusting and determining the equities of all the parties to this action, and determining the validity, extent and priority of all claims and liens to be asserted herein;

(c) That the defendants, and each of them, and all persons claiming by, through or under them, or any of them, be forever foreclosed of all equity of redemption or other lien, claim or interest in and to the funds for said project;

(d) That judgment be rendered in form only against the project herein above described. That defendant _____ as surety of the aforesaid undertaking and defendant _____ be adjudged liable to plaintiff for the amount of its said lien, with interest thereon, and that plaintiff recover judgment against them and each of them therefore.

2. On the second separate cause of action against defendant _____, the sum of $_____, with interest and the costs of this action;

3. On the third separate cause of action against defendant _____, the sum of $_____, with interest and the costs of this action.

4. For such other further and different relief as to this Court may seem just and proper in the premises.

s/ _____
[Signing Attorney's Name]
[NAME OF LAW FIRM]
Attorneys for Plaintiff
[Address]
[Telephone No.]

[Add verification]

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