SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, A.J.S.C.

SUPREME COURT : ORANGE COUNTY

----------X

JUSTIN WICKE-COAMEY and SUZANNE WICKE-COAMEY,

Plaintiffs,

– against --

DOUGHERTY CONCRETE, INC., MARK SORGE EXCAVATING, CORP., TURNBULL WELL DRILLING ASSOCIATES, LLC and WOODWARD'S CONCRETE PRODUCTS, INC.,

Defendants.

----------X

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF000843/18

DECISION and ORDER

Motion Date: March 20, 2019

The following papers numbered 1 to 11 were read and considered on a motion by the Plaintiffs, (1) pursuant to CPLR §3212, for summary judgment as against the Defendants Dougherty Concrete, Inc., Mark Sorge Excavating Corp. and Woodward's Concrete Products, Inc. on their first and second causes of action, and dismissing those Defendants' affirmative defense and counterclaims, and (2) pursuant to CPLR §3217, to dismiss the counterclaim of the Defendant Turnbull Well Drilling Associates, LLC, and to discontinue the action as against that Defendant.

Notice of Motion- Falkowski Affirmation- Wicke-Coamey Affidavit- Downing Affidavit- Exhibits A-D - Gieger Affidavit- Exhibits A-S 1-7
Affirmation in Opposition- Preston- Exhibits A-C 8-9
Affirmation in Reply- Falkowski- Exhibit A 10-11

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Introduction

The Plaintiffs Justin Wicke-Coamey and Suzanne Wicke-Coamey own property located at 130 Hickory Lane in Minisink, New York (hereinafter the "Property"). They are two of several property owners who hired non-party J.C. Builders, Inc. (hereinafter "J.C. Builders") to

build a home, and who were adversely affected by J.C. Builders' failures and bankruptcy.

The Defendants are all unpaid subcontractors of J.C. Builders who filed mechanic's liens against the Property, to wit: Mark Sorge Excavating Corp. (hereinafter "Sorge Excavating"); Dougherty Concrete, Inc. (hereinafter "Dougherty Concrete"); Turnbull Well Drilling Associates, LLC (hereinafter "Turnbull Well") and Woodward's Concrete Products, Inc. (hereinafter "Woodward's Concrete").

The Plaintiffs commenced this action to vacate and discharge the liens pursuant to Lien Law §§ 3 and 4.

Each of the Defendants answered and raised the affirmative defenses of failure to state a cause of action, waiver and estoppel. Further, each counterclaimed to enforce their lien.

The Plaintiffs now move for summary judgment as against Dougherty Concrete, Sorge Excavating and Woodward's Concrete, and to discontinue the action as against Turnbull Well.

The motion is granted.

Factual Background/Procedural History

In June of 2017, the Plaintiffs purchased property from J.C. Builders upon which J.C. Builders agreed to construct a home. J.C. Builders had sole authority to hire and supervise the work force, including subcontractors.

Also in June of 2017, the Plaintiffs entered into a building and loan contract with Walden Savings Bank (hereinafter "Bank") to finance construction of the home.

In or about August of 2017, J.C. Builders began construction on the home.

J.C. Builders hired various sub-contractors, including the Defendants herein.

On or about October 16, 2017, a representative of the Bank inspected the Property,

deemed construction to be sixteen percent (16%) complete, and made partial payment of $55,680.00; which the Plaintiffs in turn paid to J.C. Builders.

However, J.C. Builders failed to pay its subcontractors, including the Defendants herein, and eventually filed a Chapter 7 Bankruptcy petition. Further, the principal of J.C. Builders (Charles Neustadt) subsequently pleaded guilty to criminal charges arising from operations.

Each of the Defendants filed a mechanic's lien against the Property, to wit: Dougherty Concrete ($15,873.23); Sorge Excavation ($9,875.00); Turnbull Well ($3,280.00) and Woodward's Concrete ($2,802.84).

The Plaintiffs commenced this action to discharge the liens.

As a first cause of action, the Plaintiffs allege that, pursuant to New York Lien Law §3, they may not be held liable to the Defendants because they did not "request or consent" to the work within the meaning of the statute.

As a second cause of action, the Plaintiffs allege that, pursuant to New York Lien Law §4, they may not be liable to the Defendants because they already paid the general contractor (J.C. Builders) for all of the labor and materials for which the Defendants seek compensation.

The Plaintiffs move for summary judgment as against Dougherty Concrete, Sorge Excavation and Woodward's Concrete (hereinafter referred to collectively as the "Remaining Defendants"), and to dismiss the action as against Turnbull Well on the ground that the case has been settled as against that Defendant.

In support of their motion, they submit an affirmation from counsel, Michael Falkowski.

Falkowski argues that the Plaintiffs are entitled to summary judgment on their first cause of action pursuant to Lien Law §3 because none of the Remaining Defendants performed work at

the Plaintiffs' request or with their consent, as required by the statute. Rather, he asserts, all were hired solely by the general contractor, J.C. Builders. Falkowski argues that the Plaintiffs' mere acquiescence to the work being performed at the direction of the general contractor did not suffice.

In any event, he argues, even assuming, *arguendo*, that the Plaintiffs did "consent" to the work performed by the subcontractors, a subcontractor cannot have a lien for an amount more than that which is owed to the general contractor. This protects homeowners from paying twice for the same work, while leaving the subcontractors free to pursue their non-payment claims against the general contractor. Here, he asserts, the Plaintiffs already paid J.C. Builders for all of the work performed and materials provided.

Indeed, he argues, the fact that no further monies were owed to the general contractor (J.C. Builders) is corroborated by the fact that, on November 9, 2017, it executed a general release in favor of the Plaintiffs.

Further, Falkowski notes, the Remaining Defendants do not dispute that all of the work and materials at issue were provided before the Bank inspected the property and made partial payment on the construction loan (*i.e.*, 16% of the total project).

Finally, he notes, the Defendants' answers set forth counterclaims and three affirmative defenses, namely failure to state a cause of action, waiver, and estoppel. However, he argues, none have merit. Indeed, he asserts, all of the asserted affirmative defenses are conclusory and unsubstantiated by any facts.

In addition, he argues, the Defendants' second and third affirmative defenses, alleging waiver and estoppel, have been withdrawn as per their verified Bill of Particulars.

Finally, Falkowski asserts, the action should be discontinued as against the Defendant Turnbull Well because the Plaintiffs had paid the lien, and Turnbull Well had issued a satisfaction, which was filed with the Orange County Clerk's Office on December 4, 2017. Accordingly, he asserts, Turnbull Well is no longer a necessary party to this action, and the Court should discontinue the action as against it.

In further support of the motion, Justin Wicke-Coamey submits his own affidavit.

Justin Wicke-Coamey notes that, pursuant to the Plaintiffs' Contract of Sale with J.C. Builders, J.C. Builders had the sole authority to hire, supervise and give direction to its work force, including subcontractors, and the Plaintiffs were contractually prohibited from "instruct[ing] ... negotiat[ing] ... or interfer[ing] with Seller's work force or subcontractors for any purpose[.]"

Further, he notes, also pursuant to the Contract of Sale, the Plaintiffs were prohibited from taking possession of the Property until after J.C. Builders had delivered a permanent Certificate of Occupancy, which did not occur.

In order to finance the purchase, he notes, the Plaintiffs took out a building and loan contract with the Bank, which agreed to loan them the principal sum $423,000.00, to be paid pursuant to a progress schedule. The loan was secured by a corresponding mortgage on the Property.

Justin Wicke-Coamey asserts that J.C. Builders hired all of the sub-contractors on the project, including the Defendants herein, none of whom were known to the Plaintiffs.

On or about October 10, 2017, the Bank inspected the Property, deemed the construction sixteen (16%) percent completed, and issued a payment of $55,680.00 to the Plaintiffs for the

same.

On October 20, 2017, Justin Wicke-Coamey avers, he gave a check in the same amount to J.C. Builders for the work.

Shortly thereafter, he asserts, the principal of J.C. Builders, Charles Neustadt, began to ignore his many requests for information and for status updates. At this point, he began to sense that something was wrong.

Finally, on November 7th, Neustadt wrote him back, stating that he was out of money, and was in "heavy debt" and couldn't get out. Neustadt also named various subcontractors who had not been paid, including the Defendants herein.

At this point, Justin Wicke-Coamey asserts, he asked Neustadt to sign a general release in favor of him and his wife, which he did.

On November 15, 2017, Neustadt told him that he was in the process of filing for bankruptcy, which he did later that day.

In April 2018, Justin Wicke-Coamey notes, Neustadt was arrested on various grand larceny charges stemming from similar conduct as to other homeowners and subcontractors. Neustadt subsequently pleaded guilty to larceny and fraud charges.

Until November 2017, Justin Wicke-Coamey avers, neither he nor his wife had any communication with any of the subcontractors herein. Further, he asserts, at no point did they enter into any agreement with any of the subcontractors herein, or consent to them performing any work at the Premises. Rather, he avers, at all times Neustadt and his company, J.C. Builders, as general contractor, communicated and contracted with the Defendants.

Justin Wicke-Coamey argues that no money is owed to J.C. Builders under the Contract

of Sale. Rather, he asserts, the $55,680.00 check he remitted to J.C. Builders was the only payment remitted by him or his wife to J.C. Builders in relation to the Property and the Contract of Sale.

He notes that J.C. Builders never completed the home and never delivered a permanent certificate of occupancy.

Justin Wicke-Coamey asserts that he had reviewed the mechanic's liens filed against his Property, as well as the answers of Remaining Defendants, and could confirm that J.C. Builders was paid for all of the work performed and materials provided by the same.

Thus, he argues, while it is unfortunate that J.C. Builders failed to pay the Remaining Defendants, their recourse was against J.C. Builders and Neustadt.

In further support of their motion, the Plaintiffs submit an affidavit from Daniel Downing, a Senior Vice President of Retail Lending for Walden Savings Bank.

Downing asserts that, in the regular performance of his job functions, he was familiar with the business records maintained by Walden pertaining to residential mortgages, building and loan contracts, subsequent inspection reports, and installment disbursements.

Here, he asserts, based on the business records of the Bank, he determined that, on June 28, 2017, the Plaintiffs and Walden entered into a Building and Loan Contract in the principal amount of $423,000.00, as well as a corresponding mortgage encumbering the vacant land known as and located at 130 Hickory Lane, Westtown, New York.

Pursuant to the loan documents, he avers, installment payments would be remitted to the owners after periodic inspections of the Premises by a Bank inspector, and upon the inspector's certification with respect to the progress made on the construction.

Here, he asserts, on October 10, 2017, an employee of the Bank inspected the subject Premises and determined that 16% of the project had been completed. Thereafter, $55,680.00 was to be remitted to the Plaintiffs for the completed work.

Further, he notes, as is evidenced by a check dated October 20, 2017, Justin Wicke-Coamey paid that same amount to J.C. Builders.

Downing asserts that he had reviewed the verified answers with counterclaims of the Defendants and could confirm that the $55,680.00 check issued to the Plaintiffs covered the worked performed and materials provided by the same.

In opposition to the Plaintiffs' motion, the Defendants submit an affirmation from counsel Kevin Preston.

Initially, Preston notes, the basic allegations of the complaint are not contested.

He asserts that the following are relevant specifics.

On November 9, 2017, Dougherty Concrete filed a notice of mechanic's lien in the amount of $15,873.23. According to the lien, Dougherty Concrete installed the foundation at the Premises between August 28th and October 10th, 2017.

On November 17, 2017, Sorge Excavating filed a notice of mechanic's lien in the amount of $9,875.00. According to the lien, Sorge Excavating provided excavating services to the Premises between September 1st and October 16th, 2017.

On December 1, 2017, Woodard's Concrete filed a notice of mechanic's lien in the amount of $2,802.84. According to the lien, Woodard's Concrete provided materials relating to the foundation between September 28th and October 13th, 2017.

Preston notes that the Defendants all counterclaimed to foreclose on their mechanic's

liens.

Further, he notes, on November 8, 2018, all served the Plaintiffs with disclosure demands.

The Defendants sought documents between the Plaintiffs and J.C. Builders relating to construction of the Premises, documents relating to any labor performed or materials provided in building any structure on the Property, documents relating to any restitution paid to the Plaintiffs by J.C. Builders or its principal, and documents relating to any communications between the Plaintiffs and the Bank regarding inspections of the Property and advances made to the Plaintiffs by the Bank.

To date, he notes, the Plaintiffs had failed to respond to the demands.

Thus, Preston argues, as a threshold issue, the Plaintiffs' motion should be denied as premature because no disclosure had occurred.

In any event, he asserts, the motion should be denied because an owner's "consent" under Lien Law §3 may be implied and inferred. Here, he asserts, the Plaintiffs' consent to the subcontractors may be implied from the Plaintiffs' contract with J.C. Builders, by which they agreed that J.C. Builders would have exclusive control over the same.

Further, Preston argues, the Plaintiff's misconstrue the law when they argue that the liens must fail because they did not have a contract with any of the Defendants. Preston notes that lack of privity of contract does not defeat a mechanic's lien.

In addition, he asserts, the Plaintiffs also misconstrue Lien Law § 4.

Preston argues that the correct standard is not whether the general contractor was paid for the work that the lienors performed, but whether the general contractor was paid what it was

owed for the work the general contractor performed at the time the liens in question were filed. Even then, he asserts, when the general contractor abandons the job (as here) and the owner undertakes the construction work on its own (as was done here), the liens attach to an amount of money representing the difference between what the general contractor charged the owner for the work and what the owner paid to complete the same work.

Here, he asserts, the Plaintiffs have not met their burden on this issue, as they have not demonstrated, as a matter of law or fact, that J.C. Builders did not perform additional work at the Property up to December 1, 2017, which is the date that the last mechanic's lien was filed.

Further, he argues, the Plaintiffs had not demonstrated that J.C. Builders was not owed additional sums under their contract for other work performed prior to these dates; they had not demonstrated that additional monies did not become due after the liens were filed; and they had not demonstrated that they did not seek to complete the work themselves. If they did seek to complete the work, Preston asserts, they had not demonstrated the cost of that work and whether it was greater or less than the amount due J.C. Builders for the same work.

At best, he argues, the Plaintiffs have proved that they made partial payment to J.C. Builders on October 10, 2017, when the Property was last inspected. Otherwise, he asserts, they claim, without proo, that the money advanced by the Bank was meant for the Defendants, and the Defendants were paid in full.

Further, he argues, this still would not answer the question of whether the builder was owed additional money as of the date of the Defendants' last liens, filed in December 2017, or afterward, for work performed by the builder, by defendants or by other subcontractors; or whether plaintiffs undertook to perform additional work on their own and, if so, what it cost

them to perform this work compared to the cost of the work pursuant to the Contract of Sale.

Indeed, he contends, this is precisely why the Defendants served disclosure demands; to determine what other construction work others may have performed both before and after the Defendants' liens were filed. The information sought bears directly on the issue of what, if any, funds attach to the liens the Defendants filed. Without that information, he argues, these questions cannot be answered.

Indeed, he notes, Justice Bartlett just found an issue of fact in a similar case involving a different homeowner who hired J.C. Builders- *Jackson v. Svizzero, Index No. EF004324-2018 [December 4, 2018].*

In reply, counsel for the Plaintiffs, Michael Falkowski, argues that the Defendants failed to raise a triable issue of fact.

Further, he asserts, the Plaintiffs' motion should not be denied pending disclosure, because all of the "facts" they seek are, in fact, entirely within their knowledge.

Indeed, Falkowski notes, none of the Defendants submitted an affidavit from someone with personal knowledge of the facts. Rather, they rely entirely on an affirmation from counsel (Preston).

In addition, he argues, Preston misstates or misunderstands the relevant law.

Further, he asserts, the Defendants, not the Plaintiffs, bore the burden of demonstrating that the Plaintiff's still owed money to J.C. Builders at the time the liens were filed, and there is no evidence that they did.

In any event, he argues, most of the Defendants' disclosure demands are overly broad, or seek irrelevant information, or seek information which has already been produced as part of

Plaintiffs' summary judgment application, such as the Contract of Sale, copies of all payments to J.C. Builders, and relevant communications between the Plaintiffs and J.C. Builders, etc.

Discussion/Legal Analysis

In relevant part, Lien Law § 3 provides:

> A contractor, subcontractor, laborer, materialman * * * who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof, or of his agent, contractor or subcontractor * * * shall have a lien for the principal and interest, of the value, or the agreed price, of such labor * * *.

The purpose of the Lien Law is to protect those who have directly expended labor and materials to improve real property at the direction of the owner. *Sky Materials Corp. v. Frog Hollow Industries, Inc.*, 125 A.D.3d 751 [2nd Dept. 2015]. However, no right of recovery against an interest in real property will lie unless the owner of that property consented to the improvements. *Sky Materials Corp. v. Frog Hollow Industries, Inc.*, 125 A.D.3d 751 [2nd Dept. 2015]. In general, although consent need not be explicit, mere passive acquiescence is not consent. *Sky Materials Corp. v. Frog Hollow Industries, Inc.*, 125 A.D.3d 751 [2nd Dept. 2015]. Rather, there must be some affirmative act or course of conduct establishing confirmation. *Sky Materials Corp. v. Frog Hollow Industries, Inc.*, 125 A.D.3d 751 [2nd Dept. 2015].

Here, the Plaintiffs failed to demonstrate, *prima facie*, that Lien Law § 3 bars enforcement of the Defendants' mechanic's liens as against them because they did not "consent" to the work at issue within the meaning of the statute.

The case law arising around Lien Law § 3 is not always completely clear because many cases speak in generalities. However, where, as here, a property owner hires a general contractor, and grants that general contractor the authority to hire subcontractors, the Court interprets the

relevant case law to provide that Lien Law § 3 allows a subcontractor to file and enforce a mechanic's lien against the property owner regardless of whether the property owner gives any further "consent" to the specific work or materials provided by the subcontractor.

For example, in *Wheeler v. Scofield*, the Court of Appeals held:

> The claim is made by the owner that the materials were not furnished with his consent. He had made a contract with Coons & Pearson to erect the house, they doing all the work, and furnishing all the materials. And the materials furnished by the plaintiff were such as were called for by this contract. The owner having made a contract for the use of these materials in the erection of the building, must be held to have consented that they should be furnished within the meaning of the act. The act gives a lien in the case of materials furnished to a contractor or sub-contractor, and it cannot be supposed in such case, the express consent of the owner is required. In the absence of any objection in such case, his consent must be inferred.

Wheeler v. Scofield, 67 N.Y. 311 (1876).

In *West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.*, the Court of Appeals held:

> A subcontractor may file a mechanics' lien for the value or the agreed price of the labor or materials furnished at the request or consent of the owner's contractor (Lien Law § 3). * * * Consequently, the Lien Law grants the subcontractor an independent right, separate and apart from a general contractor's remedies, to file and enforce a mechanics' lien against a person liable for the debt upon which the lien is founded, such as the owner, and the real estate being improved.

West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co., 87 N.Y.2d 148 (1995).

Moreover, the Court notes, these holdings comport with the plain language of Lien Law § 3, which provides in relevant part that: "A * * * subcontractor * * * who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof, ***or of his agent, contractor or subcontractor*** * * * shall have a lien for the principal and interest, of the value, or the agreed price, of such labor * * * [emphasis added].

Indeed, the Court notes, given the manner in which many construction projects proceed,

with a general contractor hiring numerous and varied subcontractors, holding that each such subcontractor must obtain some form of additional "consent" from the property owner before being able to avail themselves of Lien Law § 3 would largely negate its application.

Rather, it appears that stricter scrutiny of the "consent" requirement is applied, for example, where a tenant has hired a contractor to perform work at leased premises, and a subcontractor is seeking to collect as against the property owner. *See e.g., Matell Contracting Co., Inc. v. Fleetwood Park Development, LLC*, 111 A.D.3d 681 [2nd Dept. 2013]; *Modern Era Const., Inc. v. Shore Plaza, LLC*, 51 A.D.3d 990 [2nd Dept. 2008].

However, this does not mean that the Defendants may enforce their liens against the Plaintiffs.

The amount of a mechanic's lien is limited by the contract under which it is claimed, and ordinarily a lienor is bound by the price term contained in the contract to which it is a party. *West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.*, 87 N.Y.2d 148 (1995); *C.C.C. Renovations, Inc. v. Victoria Towers Development Corp.*, 168 A.D.3d 664 [2nd Dept. 2019].

The lienor's right to recover is further limited by principles of subrogation. *C.C.C. Renovations, Inc. v. Victoria Towers Development Corp.*, 168 A.D.3d 664 [2nd Dept. 2019]. Thus, no individual mechanic's lien can exceed the total amount owed by the owner to the general contractor at the time of the filing of the notice of lien. *Lien Law § 4[1]; C.C.C. Renovations, Inc. v. Victoria Towers Development Corp.*, 168 A.D.3d 664 [2nd Dept. 2019]. The subcontractor's right to recover is derivative of the right of the general contractor to recover, and if the general contractor is not owed any amount under its contract with the owner at the time the subcontractor's notice of lien is filed, then the subcontractor may not recover. *C.C.C.*

Renovations, Inc. v. Victoria Towers Development Corp., 168 A.D.3d 664 [2nd Dept. 2019]. Thus, in the event the general contractor fails to pay a subcontractor with the sums the owner has already paid, the Lien Law protects owners from paying more than the value of the improvements, or the contract price. *West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.*, 87 N.Y.2d 148 (1995).

Here, the relevant dates are as follows:

The mechanics' liens of Dougherty Concrete, Sorge Excavating and Woodard's Concrete were filed on November 9th, November 17th and December 1st, 2017, respectively. According to the same, the last work and materials for which compensation is being sought were provided on October 10th, October 16th and October 13th, 2017, respectively.

On or about October 16, 2017, a representative of the Bank inspected the Property, deemed construction to be sixteen percent (16%) completed, and made payment of $55,680.00; which the Plaintiffs in turn paid to J.C. Builders.

On November 9, 2017, J.C. Builders and the Plaintiffs signed a mutual release of all further obligation under their contract.

On November 15, 2017, J.C. Builders filed for bankruptcy protection.

The Court finds that, with these facts, the Plaintiffs demonstrated a *prima facie* entitlement to judgment on as a matter of law on their contention that recovery on the mechanic's liens as against them is barred by Lien Law § 4, and that the Remaining Defendants' affirmative defenses and counterclaims should be dismissed.

In opposition, none of the Remaining Defendants raised a triable issue of fact.

Further, the Remaining Defendant did not demonstrate that summary judgment is

premature due to a lack of disclosure. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion or invoke the operative provisions of CPLR §3212(f). *See, e.g., Groves v. Land's End Housing Co., Inc.,* 80 N.Y.2d 978 (1992); *Cortes v. Whelan,* 83 A.D.3d 763, 922 N.Y.S.2d 419 [2nd Dept. 2011]; *Companion Life Insurance Co. of New York v. Allstate Abstract Corp.,* 35 A.D.3d 519 [2nd Dept. 2006].

Furthermore, the case decided by Justice Bartlett, cited by the Defendants, involved different facts and does not change the result in the case at bar. *Jackson v. Svizzero, Index No. EF004324-2018 [December 4, 2018]).*

Finally, that branch of the Plaintiffs' motion which seeks to dismiss the counterclaim of Turnbull Well and to discontinue the action as against that Defendant is granted without opposition.

Accordingly, and for the reasons discussed herein, it is hereby,

ORDERED, that the motion is granted in its entirety.

The foregoing constitutes the decision and order of the court.

Dated: May 1, 2019
Goshen, New York

ENTER

HON. ROBERT A. ONOFRY, A.J.S.C.

TO: Richland & Falkowski, PLLC
for the Plaintiff
Office & P.O. Address
35-37 36th Street, 2nd Floor
Astoria, New York 11106

MacVean, Lewis, Sherwin & McDermott, P.C.
For the Moving Defendants
Office & P.O. Address
34 Grove Street, P.O. Box 310
Middletown, New York 10940

Turnbull Well Drilling Associates, LLC
56 Pine Island Turnpike
Warwick, New York 10990