DOCKET NO. CV-23-6131243-S	:	STATE OF CONNECTICUT
SINCLAIR DIGITAL SERVICES, INC.	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	AT NEW HAVEN
AUTOMATED SYSTEMS DESIGN, INC.	:	APRIL 17, 2024

MEMORANDUM OF DECISION
MOTION FOR AWARD OF DAMAGES (#114)

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A hearing on the applicable motion for award of damages was heard on November 20, 2023. The parties agreed to waive the 120-day time for issuance of the court's decision until April 19, 2024.

The parties submitted affidavits and evidence to the court, and the parties attest to the following facts. The present motion for damages arises from an agreement between 500, LLC (owner), the sole owner of record of real property known as the Marcel Hotel, located at 500 Sargent Street, New Haven, Connecticut (property), Becker and Becker Associates, Inc., an affiliated entity and agent of the owner, and the plaintiff, Sinclair Digital Services, Inc. See Docket Entry No. 115, Affidavit of Farukh Aslam,[1] ¶¶ 6-9 (hereinafter Aslam Aff.). Pursuant to the agreement, the plaintiff was to perform design and construction services for the installation of technology systems on the property. Aslam Aff., ¶ 9. The plaintiff subcontracted with the defendant, Automated Systems Design, Inc., to furnish labor and materials to install low-voltage infrastructure on the property. See Aslam Aff., ¶ 9; Docket Entry No. 118, Affidavit of Mike

[1]Aslam is the Chief Executive Officer of the plaintiff. Aslam Aff., ¶ 2.

Castiglione,[2] ¶¶ 5-6 (hereinafter Castiglione Aff.). Pursuant to the agreement between the plaintiff and the defendant, the plaintiff issued the defendant a first work order, dated September 18, 2020, for work to be performed at the property. Castiglione Aff., ¶ 7. The plaintiff then issued a second work order to the defendant, dated January 7, 2021, for work to be performed at the property.[3] Castiglione Aff., ¶ 8. Pursuant to the second work order, the defendant would provide training to the owner "to ensure that clients are able to adequately provide day to day operation" of the technology systems. Castiglione Aff., ¶ 11. The defendant commenced work on the property on January 8, 2021, and provided training to the owner's employees on the audio-visual system in accordance with the subcontract on September 29, 2022, and September 30, 2022. Castiglione Aff., ¶¶ 12-13. The defendant attests that the plaintiff failed to pay the defendant in full for the work it performed at the property under the parties' subcontract. Castiglione Aff., ¶ 14.

On December 28, 2022, the defendant recorded a mechanic's lien against the property in connection with sums allegedly due for work performed on the property in the amount of $260,441.13. See Aslam Aff., ¶ 10; Castiglione Aff., ¶ 15. The recorded lien reflects that the defendant's last date of work was September 28, 2022. Aslam Aff., ¶ 13. The recorded lien was signed by Dillon Nash, the vice president of Speedy Lien, Inc., a New York corporation. Aslam Aff., ¶ 15. The plaintiff received a notice of intent to file a mechanic's lien from the defendant on December 27, 2022, and received a notice of a lien on January 3, 2023; Aslam Aff., ¶ 16; however, the plaintiff attests that the defendant failed to send a notice of intent to claim a

[2]Castiglione is the Chief Operating Officer of the defendant. Castiglione Aff., ¶ 2.

[3]The two work orders constituted the parties' subcontract. Castiglione Aff., ¶ 9.

mechanic's lien to the owner within ninety days of its last date of work. Aslam Aff., ¶ 18. A notice of a lien was received by the owner on December 30, 2022. Aslam Aff., ¶ 19.

On January 10, 2023, the plaintiff sent the defendant a notice to discharge the mechanic's lien via certified mail, return receipt requested. Aslam Aff., ¶ 11. The notice stated that the mechanic's lien was invalid and subject to discharge pursuant to General Statutes § 49-51. Aslam Aff., ¶ 11. The plaintiff's notice to discharge was delivered to the defendant on January 17, 2023, and was delivered to the defendant's registered agent on January 12, 2023. Aslam Aff., ¶ 12. After the defendant failed to release the mechanic's lien within thirty days of its receipt of the plaintiff's notice to discharge, the defendant, through its counsel, agreed to accept a bond in substitution of its mechanic's lien. Aslam Aff., ¶ 20. In order to secure the bond, the plaintiff was required to provide collateral in the full amount of the bond. Aslam Aff., ¶ 21. The plaintiff furnished the bond, but the bond furnished was not accepted and the lien was not released. Aslam Aff., ¶ 22.

The plaintiff attests that the defendant refused to accept the bond and release the lien; see Aslam Aff., ¶ 22; but the defendant attests that it did not refuse to substitute the bond for the lien. See Docket Entry No. 119, Affidavit of Scott Orenstein,[4] ¶ 7 (hereinafter Orenstein Aff.). In particular, the defendant attests that the bond the plaintiff had issued was not based upon the form the parties had discussed and that because the form of the bond issued by the plaintiff's

[4]Orenstein is counsel for the defendant. Orenstein Aff., ¶ 3.

surety did not comply with General Statutes § 42-158o,[5] the bond was not accepted. Orenstein Aff., ¶¶ 10-12.

As a result, the plaintiff, a person having an interest in real property described in a certificate of lien pursuant to General Statutes § 49-51, commenced an application to discharge the recorded lien. Aslam Aff., ¶¶ 5, 23. On June 5, 2023, counsel for the defendant notified the plaintiff's counsel that the defendant was going to release the lien. Castiglione Aff., ¶ 13. Counsel for the plaintiff initially indicated that she may seek a continuance of the June 13, 2023 hearing on the application to discharge the lien, but on June 7, 2023, stated that the plaintiff decided not to continue the hearing in the event that the lien was not released by then.[6] Castiglione Aff., ¶ 14.

On June 9, 2023, the plaintiff received notice that the defendant sent a release of mechanic's lien to the clerk of the City of New Haven to record on the land records. Aslam Aff., ¶ 24. Notwithstanding the release of the lien, as a result of the defendant's actions, the plaintiff attests that it has incurred approximately $13,540.50 in attorney's fees and has suffered damages in the amount of $3,365, the premium incurred in securing the bond. Aslam Aff., ¶¶ 25-26.

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[5]General Statutes § 42-158o provides: "No surety shall be obligated to include in the payment of a bond issued by such surety any interest, costs, penalties or attorneys' fees imposed on the principal of such bond under any provision of sections 42-158i to 42-158o, inclusive, or 49-33 or subsection (a) of section 52-249, unless the terms of the bond expressly reference said sections and subsection and state that such surety is obligated to pay such interest, costs, penalties or attorneys' fees."

[6]The defendant also attests that on July 25, 2023, it commenced an action against the plaintiff in the United States District Court for the District of Connecticut asserting breach of contract and related claims arising from the plaintiff's failure to pay the defendant in full. Castiglione Aff., ¶ 15. The defendant's claims against the plaintiff in the federal court action seek damages arising from the plaintiff's nonpayment of the same amount that is the subject of the lien. Castiglione Aff., ¶ 16.

Following a status conference, the court, *Blue, J.*, issued an order on June 22, 2023, directing the plaintiff to file a motion for damages and attorney's fees claimed as a result of the mechanic's lien in question. See Docket Entry No. 113. Pursuant to the court's June 22, 2023 order, the plaintiff filed a motion for award of damages and accompanying memorandum of law on August 11, 2023. In support of its motion, the plaintiff submitted the affidavit of Farukh Aslam and several exhibits. In response, the defendant filed an objection to the plaintiff's motion for award of damages on September 18, 2023. In support of its objection, the defendant submitted the affidavits of Michael Castiglione and Scott Orenstein. Subsequently, on September 26, 2023, the plaintiff filed a reply to the defendant's objection.

The plaintiff disputes the validity of the defendant's lien. The plaintiff argues that the defendant's lien is invalid because: (1) it was not filed within ninety days of the defendant's last date of work in accordance with General Statutes § 49-34 (1); (2) it was not subscribed and sworn to by the defendant in accordance with § 49-34 (1) (C); (3) the defendant failed to send a notice of intent to claim a mechanic's lien to the owner within ninety days of its last date of work in accordance with General Statutes § 49-35; and (4) the notice of lien sent to the plaintiff and/or the owner were not true and attested copies of the recorded lien in accordance with §§ 49-34 (2) and 49-35. The plaintiff further asserts that it is entitled to recover damages, including attorney's fees, pursuant to § 49-51 as a result of the defendant's failure to discharge the lien within thirty days of the statutory notice to discharge.

Conversely, the defendant argues that: (1) the lien failed to account for training services provided by the defendant on September 29, 2022, and September 30, 2022; (2) the lien was adequately subscribed and sworn to by a representative of the lien service the defendant engaged

to file the lien as its agent; (3) the notice of lien sent to the owner was sufficient to satisfy the notice requirement of both § 49-34 and 49-35; and (4) the copy of the lien served contained all of the substantive information required under § 49-34 (2), and, thus, the lien is not invalid. The defendant further argues that there is no evidence that it acted frivolously or that the lien was filed without just cause, and, therefore, the plaintiff is not entitled to an award of damages.

LEGAL ANALYSIS

I.

Validity of the Defendant's Lien

The plaintiff first asserts that the defendant's lien is invalid because it was not filed within ninety days of the defendant's last date of work as required under § 49-34 (1). Specifically, the plaintiff argues that, per the recorded lien, the defendant's last date of work was September 28, 2022, and that, to be timely, the lien had to be recorded on or before December 27, 2022. Instead, the recorded lien was not filed until December 28, 2022, and is therefore untimely. The plaintiff further attests that December 27, 2022, fell on a Tuesday and was not an observed holiday; accordingly, the city clerk's office in New Haven was open for recording documents. See Aslam Aff., ¶ 14.

The defendant acknowledges that the lien identifies September 28, 2022, as the last day on which work was performed and that its lien was filed on December 28, 2022, ninety-one days after September 28, 2022. The defendant contends, however, that the completion date stated in the lien is not determinative and that the lien failed to account for training services that the defendant provided on September 29, 2022, and September 30, 2022. In response, the plaintiff argues that although payment for training services may be recoverable under the subcontract, the

defendant has failed to establish that any purported training constitutes lienable services under § 49-33[7] so as to render its lien timely filed.

Importantly, General Statutes § 49-34 provides: "*A mechanic's lien is not valid unless the person performing the services or furnishing the materials (1) within ninety days after he has ceased to do so, lodges with the town clerk of the town* in which the building, lot or plot of land is situated *a certificate in writing*, which shall be recorded by the town clerk with deeds of land, (A) describing the premises, the amount claimed as a lien thereon, the name or names of the person against whom the lien is being filed and the date of the commencement of the performance of services or furnishing of materials, (B) stating that the amount claimed is justly due, as nearly as the same can be ascertained, and (C) *subscribed and sworn to by the claimant*, and (2) not later than thirty days after lodging the certificate, *serves a true and attested copy of the certificate upon the owner* of the building, lot or plot of land in the same manner as is provided for the service of the notice in section 49-35." (Emphasis added.).

[7]General Statutes § 49-33 provides in relevant part: "(a) If any person has a claim for more than ten dollars for *materials furnished or services rendered* in the construction, raising, removal or repairs of any building or any of its appurtenances or in the improvement of any lot or in the site development or subdivision of any plot of land, and the claim is by virtue of an agreement with or by consent of the owner of the land upon which the building is being erected or has been erected or has been moved, or by consent of the owner of the lot being improved or by consent of the owner of the plot of land being improved or subdivided, or of some person having authority from or rightfully acting for the owner in procuring the labor or materials, the building, with the land on which it stands or the lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then the plot of land, is subject to the payment of the claim. . . ." (Emphasis added.)

"[T]he general rule is that the time period for filing a certificate of mechanic's lien commences on the last date on which services were performed or materials were furnished."[8] *F.B. Mattson Co.* v. *Tarte*, 247 Conn. 234, 239-40, 719 A.2d 1158 (1998). But "our courts have been liberal in validating liens despite claimed errors on the face of the lien certificate where the mistake was made in good faith and no resulting prejudice was claimed." *First Constitution Bank* v. *Harbor Village Ltd. Partnership*, 230 Conn. 807, 816, 646 A.2d 812 (1994). Even though the date of completion identified in the lien is not determinative; see *Westland* v. *Goodman*, 47 Conn. 83, 86 (1879); the defendant's training services only extend the time frame in which it may timely file its lien if they constitute lienable services.

"[O]ur cases construing [§ 49-33] have required as a condition of lienability that the work done be *incorporated in* or *utilized in* the building to be constructed, raised, removed or repaired

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[8]Only under limited circumstances have our courts declined to invalidate a lien that was not recorded within ninety days of the last date of work. In *S.M. Berger, Inc.* v. *MCJ, LLC*, Superior Court, judicial district of Litchfield, Docket No. CV-10-6001507-S (August 19, 2010, *Roche, J.*) (50 Conn. L. Rptr. 514, 517), the court declined to grant summary judgment where the clerk's office was closed on the ninetieth day and notice was given on the following day the clerk's office was open. Furthermore, our courts have expressed that "when work has been substantially completed and the contractor unreasonably has delayed final completion, the time period for filing a certificate of mechanic's lien will be computed from the date of substantial completion. . . . Moreover, when an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion. . . . If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien." (Citations omitted.) *F.B. Mattson Co.* v. *Tarte*, supra, 247 Conn. 239-40. The plaintiff does not argue that the defendant unreasonably delayed final completion of its work nor does the defendant advance any argument to suggest that it could not have timely filed its lien because the clerk's office was closed. Additionally, although the defendant attests that it provided training services pursuant to its subcontract with the plaintiff, the defendant does not argue that the owner requested any trivial services or materials. Consequently, the issue is whether the training services provided are lienable services.

or in the improvement of any lot or subdivision." (Emphasis in original; internal quotation marks omitted.) *Cianci* v. *Originalwerks, LLC*, 126 Conn. App. 18, 26, 16 A.3d 705 (2011). The services and materials furnished must therefore enhance the property in some physical manner, lay the groundwork for the physical enhancement of the property or play an essential part in the scheme of physical improvement. *Thompson & Peck, Inc.* v. *Division Drywall, Inc.*, 241 Conn. 370, 380, 696 A.2d 326 (1997); see *Ceci Bros., Inc.* v. *Five Twenty-One Corp.*, 51 Conn. App. 773, 781, 724 A.2d 541 (1999) ("for the plaintiff to establish that its services were lienable, it must demonstrate that (1) it rendered 'services' within the ambit of § 49-33 (a) and (2) these 'services' were rendered 'in the construction, raising, removal or repairs of any building or any of its appurtenances or in the improvement of any lot or in the site development or subdivision of any plot of land . . . .' General Statutes § 49-33 (a)").

In the present case, the defendant cites no case law that purports to establish that training services qualify as lienable services. The defendant asserts only that it would have presented evidence pertaining to the training services at the hearing on the plaintiff's application to discharge the mechanic's lien, and submits the affidavit of Mike Castiglione. Because the defendant released the lien before the hearing could proceed, the court will consider only the evidence submitted by the parties in support of their briefs.

Castiglione attests that "[o]n September 29 and 30, 2022, [the defendant] provided training to [the owner's] employees (hotel management staff) on the audio-visual system in accordance with the Subcontract. See Exhibit D, Project Delivery & Acceptance, dated 9/30/22 .

. . ."[9] Castiglione Aff., ¶ 13. The defendant has not described how the training provided to hotel management staff enhanced the property in some physical manner, laid the groundwork for the physical enhancement of the property or played an essential part in the scheme of physical improvement. See *Thompson & Peck, Inc.* v. *Division Drywall, Inc.*, supra, 241 Conn. 380. On the basis of the brief description of the training in Castiglione's affidavit, the training appears to be directed toward teaching hotel management staff how to use the newly installed audio-visual equipment. Although the defendant may be entitled to recover under its subcontract for the training services it provided, the training provided does not constitute a physical enhancement, nor does training on the use of audio-visual equipment play an essential part in the scheme of physical improvements made to the property. Therefore, the training does not constitute a lienable service. Accordingly, to be timely, the defendant's lien had to be recorded on or before December 27, 2022. Because the recorded lien was not filed until December 28, 2022, ninety-one days after the last date of work, the defendant's lien was invalid.

The plaintiff's remaining arguments are that the lien was not subscribed and sworn to by the defendant in accordance with § 49-34 (1) (C), that the defendant failed to send a notice of intent to claim a mechanic's lien to the owner within ninety days of its last date of work in accordance with § 49-35,[10] and that the notice of lien sent to the plaintiff and/or the owner were

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[9]Exhibit D does not provide any further description as to the training services provided and their relationship to the construction project.

[10]General Statutes § 49-35 provides in relevant part: "(a) No person other than the original contractor for the construction, raising, removal or repairing of the building, or the development of any lot, or the site development or subdivision of any plot of land or a subcontractor whose contract with the original contractor is in writing and has been assented to in writing by the other party to the original contract, is entitled to claim any such mechanic's lien, unless, after commencing, and not later than ninety days after ceasing, to furnish materials or

not true and attested copies of the recorded lien in accordance with §§ 49-34 (2) and 49-35. Having determined that the defendant's lien is invalid on the basis that the lien was not timely filed, the court need not address the plaintiff's remaining arguments pertaining to the validity of the defendant's lien.[11]

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render services for such construction, raising, removal or repairing, such person *gives written notice to the owner of the building*, lot or plot of land and to the original contractor that he or she has furnished or commenced to furnish materials, or rendered or commenced to render services, and intends to claim a lien therefor on the building, lot or plot of land . . . ."

[11]Assuming, arguendo, that the defendant's lien was timely filed, the defendant's lien would still be invalid because it was not properly subscribed and sworn to.

"[T]he guidelines for interpreting mechanic's lien legislation are . . . well established. Although the mechanic's lien statute creates a statutory right in derogation of the common law . . . its provisions should be liberally construed in order to implement its remedial purpose of furnishing security for one who provides services or materials. . . . [The court's] interpretation, however, may not depart from reasonable compliance with the specific terms of the statute under the guise of a liberal construction." (Citations omitted; internal quotation marks omitted.) *F.B. Mattson Co.* v. *Tarte*, supra, 247 Conn. 238.

The plaintiff argues that the lien is invalid because it was not subscribed and sworn to by the *claimant* as required under § 49-34 (1) (C). Specifically, the plaintiff asserts that the claimant must sign the lien and take part in an oath ceremony, and, further, that there be evidence in the lien, such as a jurat, confirming the administration of the oath by a notary public or a commissioner of the Superior Court. The defendant's lien was signed by Nash, whom the plaintiff argues is not an officer or an attorney-in-fact of the defendant and has no personal knowledge of the work performed by the defendant or of the claims asserted in the recorded lien. The defendant avers that Nash is a representative of the lien service engaged to file the lien as the defendant's agent. In support of its argument, the defendant submits that the lien contained a statement providing, in pertinent part, that Nash, "being duly sworn," is the agent of the defendant and "has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge." See Aslam Aff., Ex. A. The defendant further submits that a notary jurat under Nash's statement confirmed that Nash executed the lien in the notary's presence. The defendant acknowledges that the notary jurat did not state that Nash signed the lien under an oath administered by the notary, but argues that Nash's signed statement reflects that he signed upon being duly sworn, and that the foregoing establishes that the lien reasonably complied with the requirement that it be subscribed and sworn to by the claimant.

Irrespective of whether Nash is a proper party to subscribe and swear to the lien as a claimant, "the 'subscribed and sworn to' provision requires that a claimant executing a mechanic's lien sign the lien at the end and take part in an oath ceremony in which the claimant swears to the truth of the facts set forth in the lien, and, further, that there be evidence in the lien,

II.

Award of Attorney's Fees Pursuant to General Statutes § 49-51

The plaintiff argues that the defendant acted frivolously when it failed to discharge the lien upon statutory notice of the lien's deficiencies, and that, pursuant to § 49-51, it is entitled to an award of damages including attorney's fees and the bond premium incurred.

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such as a jurat, confirming the administration of the oath by a notary public or a commissioner of the Superior Court." *Stone-Krete Construction, Inc.* v. *Eder*, 280 Conn. 672, 679, 911 A.2d 300 (2006). This does not mean that the lien must contain a written recital of the claimant's oath; however, the lien must reflect that the claimant took part in an oath ceremony. Id., 681-83. For instance, a passage in the certificate of lien in *Stone-Krete Construction* contained a statement that the "signer of the foregoing certificate . . . made solemn oath." (Internal quotation marks omitted.) Id., 675. This statement was signed by the plaintiff's attorney, acting as a commissioner of the Superior Court. Id., 675.

The present attestation does not, on its face, evidence that Nash took part in an oath ceremony, and the jurat's certification likewise does not express that any oath was administered. Accordingly, the defendant's lien is invalid because it was not properly subscribed or sworn to by the claimant.

With respect to the plaintiff's other arguments, a subcontractor may satisfy the notice requirements of both § 49-34 and § 49-35 by serving one document. *H & S Torrington Associates* v. *Lutz Engineering Co., Inc.*, 185 Conn. 549, 555, 441 A.2d 171 (1981); see also *Professional Electrical Contractors of Connecticut, Inc.* v. *Stamford Hospital*, 196 Conn. App. 430, 448, 230 A.3d 773 (2020) (citing *H & S Torrington Associates* v. *Lutz Engineering Co., Inc.*, supra, 185 Conn. 549). The plaintiff acknowledges that the owner received a notice of lien on December 30, 2023, within thirty days of the defendant recording the lien. Because the defendant timely provided a copy of the lien certificate, the defendant satisfied the statutory requirements of both §§ 49-34 and 49-35. Additionally, our courts have deemed substantial compliance to satisfy the mechanic's liens statutes where mistakes in liens were made in good faith and no resulting prejudice was claimed. See *First Constitution Bank* v. *Harbor Village Ltd. Partnership*, supra, 230 Conn. 816-17 (defendant's inadvertent failure to include Exhibit A in recordation did not indicate failure to attempt to comply with provisions of § 49-34). Although the mistake was made in serving a copy of the notice of lien rather than in the certificate itself, at minimum, the defendant's copy provided information sufficient to place the owner on notice that a lien was filed. The original copy, with the attestation of Nash, was filed on December 28, 2022. At the time the owner received notice, the original copy of the lien was recorded and available to the owner as a public record.

Section 49-51 provides in relevant part: "(a) Any person having an interest in any real or personal property described in any certificate of lien, which lien is invalid but not discharged of record, may give written notice to the lienor sent to him at his last-known address by registered mail or by certified mail, postage prepaid, return receipt requested, to discharge the lien. Upon receipt of such notice, the lienor shall discharge the lien by sending a release sufficient under section 52-380d, by first class mail, postage prepaid, to the person requesting the discharge. If the lien is not discharged within thirty days of the notice, that person may apply to the Superior Court for such a discharge, and the court may adjudge the validity or invalidity of the lien and may award the plaintiff damages for the failure of the defendant to make discharge upon request. *If the court is of the opinion that such certificate of lien was filed without just cause, it may allow, in its discretion, damages to any person aggrieved by such failure to discharge*, at the rate of one hundred dollars for each week after the expiration of such thirty days, but not exceeding in the whole the sum of five thousand dollars *or an amount equal to the loss sustained by such aggrieved person as a result of such failure to discharge the lien, which loss shall include, but not be limited to, a reasonable attorney's fee*, *whichever is greater*. . . ." (Emphasis added.)

"[U]nder [§ 49-51], an award of damages to a lienee, including reimbursement of its attorney's fees, does not flow automatically from a court's determination that the lien is invalid and should be discharged. See, e.g., *Richard Riggio & Sons, Inc.* v. *Galiette*, 46 Conn. App. 63, 698 A.2d 336, cert. denied, 243 Conn. 920, 701 A.2d 343 (1997), cert. denied sub nom. *Galiette* v. *Connecticut*, 522 U.S. 1115, 118 S. Ct. 1050, 140 L. Ed. 2d 113 (1998). Rather, such an award is discretionary, as indicated by the statutory language providing that a court '*may* award the plaintiff damages for the failure of the defendant to make discharge [of a lien] upon request.'

. . . Furthermore, pursuant to the statute, an award of damages is justified only '[*i*]*f* the court is of the opinion that [the] certificate of lien was filed without just cause . . . .'" (Citations omitted; emphasis in original.) *Torrance Family Ltd. Partnership* v. *Laser Contracting, LLC*, 94 Conn. App. 526, 536, 893 A.2d 460 (2006). "'Just cause' implies a reasonable ground for engaging in a course of conduct as distinguished from a frivolous or incompetent ground. See *Cassella* v. *Civil Service Commission*, 202 Conn. 28, 37 [519 A.2d 67] (1987); *Sheets* v. *Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 475 [427 A.2d 385] (1980)." *Huckabee Plumbing* v. *Falco*, Superior Court, judicial district of Fairfield, Docket No. 27 99 13 (April 9, 1991, *Thim, J.*).

In support of its argument, the plaintiff relies upon two Superior Court cases, *Sidelnikov* v. *Miller*, Superior Court, judicial district of Danbury, Docket No. CV-20-6037104-S (November 1, 2022, *Brazzel-Massaro, J.*) and *Sunbelt Rentals, Inc.* v. *Hayford Builders, LLC*, Superior Court, judicial district of Middlesex, Docket No. CV-16-6014932-S (April 10, 2017, *Aurigemma, J.*). Neither case evaluated whether the mechanic's lien in question was filed with or without just cause.[12]

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[12]Rather, in each case, the court determined that the mechanic's lien was invalid and decided to award attorney's fees or hold a hearing to determine damages because the defendant failed to discharge the lien after notice was given requesting discharge.

In *Sidelnikov*, the court stated that "[t]he refusal even after the passage of the statutory time period to foreclose the lien and the failure as noted by this court to take any action regarding the lien is a basis for the court to award reasonable attorneys' fees pursuant to [§ 49-51]. The defendant . . . testified that the agreement entered into for the property . . . addressed only profits to be shared but never addressed the failure to move forward and take any action to foreclose the lien. Thus, the court grants the motion for attorney's fees . . . ." *Sidelnikov* v. *Miller*, supra, Superior Court, Docket No. CV-20-6037104-S. In *Sidelnikov*, a distinguishing factor was the defendant's failure to foreclose its lien after the passage of the statutory time period. Id.

In *Sunbelt*, the court noted that "[t]he plaintiff here pursued the foreclosure of a mechanic's lien after it knew or should have [known] that the lien was invalid." Id. "Since [the plaintiff's] only information was that their equipment had been stored at [the defendant's] property, the notice should have convinced [the plaintiff] that its lien was invalid. [The

Although a broad reading of *Sidelnikov* and *Sunbelt* may provide a basis for an award of damages under § 49-51 on the basis of the plaintiff's notice to the defendant regarding deficiencies in the lien, the majority of Connecticut courts have awarded damages pursuant to § 49-51 only when the certificate of lien was *filed* without just cause. See *Malpeso* v. *Malpeso*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-15-6024936-S (December 9, 2015, *Lee, J.*) (61 Conn. L. Rptr. 432, 435) (finding that money judgment lien was filed without just cause and awarding statutory damages); *Frenette* v. *Water-Oak Roofing*, Superior Court, judicial district of Waterbury, Docket No. CV-08-5009746-S (November 25, 2008, *Resha, J.*) (finding defendant filed mechanic's lien without just cause); *White* v. *Van Rhijn*, Superior Court, judicial district of New Haven, Docket Nos. CV-00-0438540-S and CV-00-0441224-S (September 26, 2001, *DeMayo, J.T.R.*) (finding lien was filed without just cause);[13] *Quinnipiack Real Estate & Development Corp.* v. *Cherry Hill Construction Co.*, Superior Court, judicial district of New Haven, Docket No. CV-97-0398294-S (May 16, 1997, *DeMayo, J.*) (finding mechanic's lien was filed without just cause and awarding attorney's fees).[14]

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defendant] claimed no work had been done with the equipment at her property and [the plaintiff] had no information to the contrary. [The plaintiff's] failure to release the lien after receiving the notice was certainly a violation of [§ 49-51]." *Sunbelt Rentals, Inc.* v. *Hayford Builders, LLC*, supra, Superior Court, Docket No. CV-16-6014932-S. Unlike in *Sunbelt*, the plaintiff here does not allege that the defendant did not perform work subject to the lien and that the defendant should have known it claimed a lien based on services that were not rendered. Accordingly, *Sunbelt* is distinguishable from the present matter.

[13]A typographical error in the judgment was corrected by the court in *White* v. *Van Rhijn*, Superior Court, judicial district of New Haven, Docket Nos. CV-00-0438540-S and CV-00-0441224-S (November 7, 2001, *DeMayo, J.T.R.*).

[14]By contrast, where there was no evidence that the lienor acted without just cause when it filed its certificate of lien, courts have refused to award damages pursuant to § 49-51. See *Rothfarb* v. *Programit, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No.

Therefore, even though the court agrees that the defendant's lien is invalid, a finding of invalidity alone is not enough to support an award of damages; the plaintiff must also demonstrate that the lienor acted without just cause. See *Huckabee Plumbing* v. *Falco*, supra, Superior Court, Docket No. 27 99 13 ("[t]he fact that a lien is invalid does not automatically call for a conclusion that the lienor acted without just cause"). In the present case, the plaintiff has not alleged or submitted evidence attesting to facts that demonstrate that the defendant acted without just cause in filing its lien. For instance, the plaintiff does not argue that the defendant did not perform the work subject to the lien or that the defendant is not owed money.

Although the plaintiff points to the defendant's refusal to substitute a bond for the lien and the defendant's release of the lien days before the scheduled hearing on the plaintiff's motion for discharge as raising the inference that the defendant acted frivolously in failing to discharge the lien upon receipt of notice, the plaintiff has not provided any evidence of wrongdoing. Indeed, the defendant contends that it did not refuse to accept a bond in substitution for the lien; rather, the bond was not accepted because the bond furnished by the plaintiff was issued using a different form than the one the plaintiff had proposed and that the defendant had revised, and

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CV-10-4018360-S (June 3, 2013, *Mottolese, J.*) (stating that "judgment lien was filed with just cause because it secured a valid monetary judgment. The continuation of the lien during the controversy was not done without just cause because the lienor had a bona fide belief he had properly released the lien."); *D&R Custom Builders, Inc.* v. *Zakorowortnyzak Props, Inc.*, Superior Court, judicial district of Ansonia-Milford at Derby, Docket Nos. CV-00-0069927-S and CV-00-0072330-S (September 23, 2002, *Ripley, J.T.R.*) (declining to conclude that filing of lien in question was done without just cause because "[t]here was a basis, albeit mistaken, on the part of the lienor to believe he was owed money for services performed"); *Quail Run Village* v. *Benedetto*, Superior Court, judicial district of Middlesex, Docket No. 62802 (March 10, 1992, *Arena, J.*) (6 Conn. L. Rptr. 163, 163) (finding record insufficient to support finding that plaintiff engaged in course of conduct that was frivolous or incompetent); *Huckabee Plumbing* v. *Falco*, supra, Superior Court, Docket No. 27 99 13 (finding lienor acted with just cause even though certificate of lien was inadequate).

because the form of the bond issued did not comply with § 42-158o.[15] The plaintiff's argument, therefore, is unavailing. The evidence presented by the defendant suggests that effort was made to substitute a bond for the lien based on an agreement with the plaintiff. The fact that the bond was not ultimately substituted for the lien does not mean that the defendant's actions were undertaken in a frivolous manner. See Black's Law Dictionary (11th Ed. 2019) (frivolous defined as "[l]acking a legal basis or merit; manifestly insufficient as a matter [of] law). Accordingly, there is no evidence to support a finding that the defendant acted frivolously in filing the lien, and the plaintiff's motion for an award of damages is hereby denied.

CONCLUSION

Although the court agrees that the defendant's lien is invalid because it was not filed within ninety days of the defendant's last date of work, the invalidity of the lien alone does not support a finding that the defendant acted without just cause. The plaintiff has not demonstrated that the defendant acted without just cause in filing its lien, nor has the plaintiff demonstrated that the defendant's actions between its receipt of the plaintiff's notice and its release of the bond were undertaken frivolously. Accordingly, the plaintiff's request for damages pursuant to § 49-51 is hereby denied. The motion for an award of damages is therefore denied.

Juris No. 421279
Wilson, J.

[15]The plaintiff did not address this argument in its reply brief.