

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - April 24, 2007

ROBERT A. SPOLZINO, J.P.  
ANITA R. FLORIO  
PETER B. SKELOS  
WILLIAM E. McCARTHY, JJ.

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2006-03212

DECISION & ORDER

Rice Mohawk U.S. Construction Co., Ltd.,  
appellant, v Sturdy Concrete Co., Corp.,  
et al., respondents.

(Index No. 16085/04)

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McCabe Flynn & Arangio, LLP, New York, N.Y. (William B. Flynn of counsel), for  
appellant.

Peckar & Abramson, P.C., New York, N.Y. (Alan Winkler of counsel), for  
respondents.

In an action to recover damages for breach of contract, the plaintiff appeals from an  
order of the Supreme Court, Queens County (O'Donoghue, J.), dated February 27, 2006, which  
granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff was a subcontractor of the defendant Sturdy Concrete Co., Corp.  
(hereinafter Sturdy) with respect to a subway reconstruction contract entered into with the New York  
City Transit Authority (hereinafter the Transit Authority). The general contract provided that any  
action under the contract was required to be "commenced within six (6) months after the date of the  
issuance of the Final Payment Certificate." The subcontract provided that the subcontractor's rights  
were subject to all of the limitations imposed on the general contractor by the general contract. The  
Supreme Court correctly read this contract language as incorporating by reference into the  
subcontract the six-month period of limitations set forth in the general contract (*see Kingsley Arms,*

*Inc. v Sano Rubin Constr. Co.*, 16 AD3d 813; *Peter Scalamandre & Sons v Village Dock, Inc.*, 187 AD2d 496). Since the plaintiff failed to commence the action within the applicable six-month period, Sturdy was entitled to summary judgment dismissing the complaint insofar as asserted against it on the ground that it was time barred.

The defendant Travelers Casualty & Surety Company of America (hereinafter Travelers) also was entitled to summary judgment dismissing the complaint insofar as asserted against it. The payment bond issued by Travelers, as surety, provided that Travelers shall not be subject to any action commenced “later than two years after the complete performance of [the general contract] and final settlement thereof.” Since the plaintiff’s action was commenced more than two years after the complete performance and final settlement of the general contract, the complaint was time barred insofar as asserted against Travelers (*see A.C. Legnetto Constr. v Hartford Fire Ins. Co.*, 92 NY2d 275, 277).

The plaintiff’s remaining contention is without merit.

SPOLZINO, J.P., FLORIO, SKELOS and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court