

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

D16145  
X/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 14, 2007

A. GAIL PRUDENTI, P.J.  
WILLIAM F. MASTRO  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON, JJ.

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2006-07031

DECISION & ORDER

Fourteen Hills Building Corp., appellant, v Oka  
Usi, et al., respondents.

(Index Nos. 19557/02 and 16560/03)

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Christopher P. Di Giulio, New York, N.Y. (William Thymius of counsel), for  
appellant.

Glynn Mercep and Purcell, LLP, Stony Brook, N.Y. (Bradley C. Abbott of counsel),  
for respondents.

In an action, inter alia, to recover damages for breach of a construction contract, and  
a related action to foreclose a mechanic's lien, which were jointly tried, the plaintiff appeals from a  
judgment of the Supreme Court, Suffolk County (Spinner, J.), dated July 6, 2006, which, after a  
nonjury trial, is in favor of the defendants and against the plaintiff on the counterclaims alleging  
breach of contract in the principal sum of \$122,720 and, inter alia, in effect, dismissed the complaints  
in both actions.

ORDERED that the judgment is affirmed, with costs.

Pursuant to a clause in the subject construction contract, the defendants had the  
absolute right to cancel the contract in the event that the building permit was denied as a result of  
overclearing or height restrictions. There was unrefuted evidence that the building permit for the  
subject property was denied due to overclearing of the property by the plaintiff during the  
construction of the house. Based upon this unrefuted evidence, the defendants were entitled to cancel

September 11, 2007

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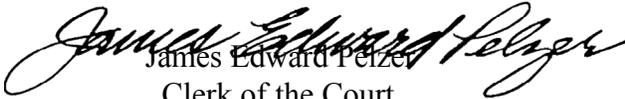
FOURTEEN HILLS BUILDING CORP. v USI

the contract, and the court properly, in effect, dismissed the complaints and awarded the defendants the principal sum of \$122,720 on their counterclaims alleging breach of contract (*see Arons v Charpentier*, 36 AD3d 636; *United Consol. Indus. v Mendel's Auto Parts*, 150 AD2d 768).

The plaintiff's remaining contentions are without merit.

PRUDENTI, P.J., MASTRO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court