

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

D23287
C/kmg

_____AD3d_____

Argued - April 21, 2009

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-02960

DECISION & ORDER

Maric Mechanical, Inc., appellant, v
Dormitory Authority of State of New York, respondent.

(Index No. 26814/05)

Tunstead & Schechter, Jericho, N.Y. (Marvin Schechter and Michael D. Ganz of counsel), for appellant.

Holland & Knight LLP, New York, N.Y. (Frederick R. Rohn and Deborah C. Roth of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Queens County (Kitzes, J.), dated February 19, 2008, as granted the defendant's motion for summary judgment dismissing the third cause of action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff contractor's third cause of action alleged that the defendant breached the parties' contract by failing to timely terminate another contractor and by failing to properly coordinate the construction project, resulting in contract delays. On its motion for summary judgment, the defendant met its prima facie burden of establishing that the damages sought by the plaintiff are barred by the no-damage-for-delay exculpatory clause of the parties' contract (*see Corinno Civetta Constr. Corp. v City of New York*, 67 NY2d 297). In opposition, the plaintiff failed to raise a triable issue of fact as to the applicability of any of the exceptions to the contractual bar (*id.*; *Zuckerman v*

May 26, 2009

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City of New York, 49 NY2d 557, 562). Accordingly, the Supreme Court properly granted the defendant's motion.

MASTRO, J.P., SKELOS, DICKERSON and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court