

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

D24325
Y/prt

_____AD3d_____

Argued - June 19, 2009

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2008-00718
2008-03580

DECISION & ORDER

All County Paving Corp., respondent,
v County of Suffolk, appellant.

(Index No. 3742/06)

Christine Malafi, County Attorney, Hauppauge, N.Y. (Ann K. Kandel of counsel), for appellant.

Pinks, Arbeit & Nemeth, Hauppauge, N.Y. (Steven G. Pinks of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant appeals from (1) an order of the Supreme Court, Suffolk County (Burke, J.), dated December 18, 2007, which denied its motion for summary judgment dismissing the complaint and granted the plaintiff's cross motion for summary judgment on the complaint, and (2) a judgment of the same court (Pastorella, J.), dated March 17, 2008, which is in favor of the plaintiff and against it in the total sum of \$395,287.52.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (*see Matter of Aho*, 39

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NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

The judgment is affirmed for the reasons stated in the companion appeal (*see Pav-Co Asphalt, Inc. v County of Suffolk*, _____AD3d_____ [decided herewith]).

MASTRO, J.P., SANTUCCI, ENG and LOTT, JJ., concur.

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DECISION & ORDER ON MOTION

All County Paving Corp., respondent,
v County of Suffolk, appellant.

(Index No. 3742/06)

Motion by the respondent to dismiss appeals from an order of the Supreme Court, dated December 18, 2007, and a judgment of the same court dated March 17, 2008, on the ground that the appeals have been rendered academic. By decision and order on motion of this Court dated April 23, 2009, the motion was held in abeyance and referred to the Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeals, it is

ORDERED that the motion is denied.

MASTRO, J.P., SANTUCCI, ENG and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court