

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

D24378
O/hu

_____AD3d_____

Argued - November 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
SHERI S. ROMAN, JJ.

2008-08899

DECISION & ORDER

Emco Tech Construction Corp., respondent, v Anthony
Pilavas, et al., appellants, et al., defendants.

(Index No. 17967/05)

Palmeri & Gaven, New York, N.Y. (John J. Palmeri of counsel), for appellant
Stoneytown Development, LLC, and Kordas and Marinis, LLP, Long Island City,
N.Y. (Peter Marinis of counsel), for appellant Anthony Pilavas (one brief filed).

LaReddola, Lester & Associates, LLP, Garden City, N.Y. (Robert J. LaReddola of
counsel), for respondent.

In an action, inter alia, to recover damages for breach of a construction contract, the
defendants Anthony Pilavas and Stoneytown Development, LLC, appeal from so much of a judgment
of the Supreme Court, Nassau County (Warshawsky, J.), entered August 25, 2008, as, after a nonjury
trial, and upon an order of the same court dated June 12, 2008, in effect, granting that branch of the
plaintiff's motion pursuant to CPLR 4404(b) which was to set aside so much of a decision of the
same court dated April 1, 2008, as awarded the plaintiff the principal sum of \$3,413, is in favor of
the plaintiff and against the defendant Anthony Pilavas in the principal sum of \$128,028 and dismissed
their counterclaims.

ORDERED that the appeal is dismissed, with costs.

The defendants Anthony Pilavas and Stoneytown Development, LLC (hereinafter the
appellants), failed to include the papers in support of, and in opposition to, the plaintiff's posttrial
motion pursuant to CPLR 4404(b) in the record on appeal.

December 15, 2009

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It is the appellants' obligation to assemble a proper record on appeal (*see* CPLR 5526; 22 NYCRR § 670.10.2[b]; *Sebag v Narvaez*, 60 AD3d 485). The appellants' reliance on CPLR 5528 is misplaced, as they did not utilize the appendix method when perfecting their appeal. In the present case, the record was inadequate because it failed to include all of the relevant documents that were before the Supreme Court (*see Fernald v Vinci*, 13 AD3d 333; *Matter of Allstate Ins. Co. v Vargas*, 288 AD2d 309). Appeals that are not based on a complete and proper record to enable this Court to render an informed decision on the merits must be dismissed (*see Matter of Arcarian Sys, Ltd.*, 38 AD3d 649; *Garnerville Holding Co. v IMC Mgt.*, 299 AD2d 450; *Matson v County of Nassau*, 290 AD2d 494).

RIVERA, J.P., DILLON, MILLER and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court