

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

D26506  
O/kmg

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

Argued - February 16, 2010

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
SHERI S. ROMAN, JJ.

---

2009-01317

DECISION & ORDER

N. Picco & Sons Contracting Co., Inc., respondent, v  
Board of Education of the Bronxville School,  
appellant.

(Index No. 7827/04)

---

The DeIorio Law Firm, LLP, Rye Brook, N.Y. (Robert G. Rafferty of counsel), for  
appellant.

Harrington, Ocko & Monk, LLP, White Plains, N.Y. (Kevin J. Harrington of  
counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract and wrongful  
termination of a construction contract, the defendant appeals from an order of the Supreme Court,  
Westchester County (Bellantoni, J.), dated January 12, 2009, which denied its motion for summary  
judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

Contrary to the defendant's contention, the plaintiff's agreement to assign, as collateral  
security, any payment received as a result of the subject litigation did not deprive the plaintiff of  
standing to maintain the subject action (*see Agristor Leasing v Barlow*, 180 AD2d 899, 901;  
*Southern Assoc. v United Brands Co.*, 67 AD2d 199, 204; *Fifty States Mgt. Corp. v Pioneer Auto  
Parks*, 44 AD2d 887, 888). Accordingly, the defendant failed to make a prima facie showing of  
entitlement to judgment as a matter of law, and the Supreme Court properly denied its motion for

March 16, 2010

Page 1.

N. PICCO & SONS CONTRACTING CO., INC. v BOARD OF  
EDUCATION OF THE BRONXVILLE SCHOOL

summary judgment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

RIVERA, J.P., ANGIOLILLO, DICKERSON and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court