

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

D26578
Y/nl

_____AD3d_____

Argued - October 16, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2007-07615

DECISION & ORDER

A.F.C. Enterprises, Inc., appellant, v New York City School Construction Authority (Maxwell High School), respondent; United States of America, intervenor-respondent.

(Index No. 15956/96)

Ingram Yuzek Gainen Carroll & Bertolotti, LLP, New York, N.Y. (Mark E. Klein and Jennifer G. Buesser of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo, Jonathan S. Becker, Percival Bailey, and Karen M. Griffin of counsel), for respondent.

Benton J. Campbell, United States Attorney, Eastern District of New York, Brooklyn, N.Y. (Charles S. Kleinberg of counsel), for intervenor-respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Queens County (Schulman, J.), dated July 19, 2007, which granted the motion of the United States of America for leave to intervene for the limited purpose of moving to stay all proceedings in this action pending the completion of federal criminal proceedings in an action entitled *United States v Catapano*, pending in the United States District Court under Docket No. 05-CR-229, and granted the cross motion of the defendant New York City Construction Authority (Maxwell High School) to stay all proceedings in this action.

ORDERED that the appeal is dismissed as academic, with one bill of costs.

March 23, 2010

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A.F.C. ENTERPRISES, INC. v NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY (MAXWELL HIGH SCHOOL)

By order dated December 10, 2009, the Supreme Court, Queens County, vacated the stay granted in the order appealed from. Accordingly, this appeal has been rendered academic.

COVELLO, J.P., SANTUCCI, CHAMBERS and LOTT, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court