

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

D27915
H/ct

_____AD3d_____

Argued - May 27, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-06936

DECISION & ORDER

In the Matter of Milcon Construction Corp., appellant,
v Freeport Union Free School District, et al., respondents.

(Index No. 010066/09)

Robert J. Miletsky, White Plains, N.Y., for appellant.

Ingerman Smith, LLP, Hauppauge, N.Y. (Mary Anne Sadowski and Michael G. McAlvin of counsel), for respondents Freeport Union Free School District and Eric Eversley, as Superintendent of Schools of the Freeport Union Free School District.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Michael G. Kruzynski of counsel), for respondent Statewide Roofing Inc.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent Freeport Union Free School District dated April 1, 2009, awarding a roofing contract to the respondent Statewide Roofing Inc., the petitioner appeals, as limited by its brief, from so much of a judgment of the Supreme Court, Nassau County (Cozzens, J.), dated June 11, 2009, as denied the petition and dismissed the proceeding.

ORDERED that the appeal is dismissed as academic, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

As the construction project has been completed, any determination by this Court with

June 22, 2010

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respect to the instant proceeding will not directly affect the parties' rights (*see Matter of Bucaro v Morales*, 62 AD3d 994, 995; *Matter of Peconic Baykeeper, Inc. v Suffolk County*, 28 AD3d 669, 670; *Barrett Foods Corp. v New York City Bd. of Educ.*, 144 AD2d 410, 411). Since the matter does not warrant our invocation of the exception to the mootness doctrine (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714; *Matter of Bucaro v Morales*, 62 AD3d at 995), the appeal must be dismissed as academic.

We note that the appellant did not move in this Court to stay the construction project from proceeding pending determination of this appeal (*see Matter of Gerster Sales & Serv., Inc. v Power Auth. of State of N.Y.*, 67 AD3d 1386).

DILLON, J.P., BALKIN, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court