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

D34223
W/kmb

_____AD3d_____ Argued - February 3, 2012

RUTH C. BALKIN, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2010-11684 DECISION & ORDER

Travelers Casualty and Surety Company of America, respondent, v Barry Stransky, et al., appellants.

(Index No. 7359/08)

King & King, LLP, Long Island City, N.Y. (Peter M. Kutil of counsel), for appellants.

Torre, Lentz, Gamell, Gary & Rittmaster, LLP, Jericho, N.Y. (Benjamin D. Lentz, Mark S. Gamell, and Lawrence S. Novak of counsel), for respondent.

In an action for reimbursement pursuant to indemnity agreements, the defendants appeal from a judgment of the Supreme Court, Queens County (Kitzes, J.), entered December 28, 2010, which, upon an order of the same court entered October 12, 2010, granting the plaintiff's motion for summary judgment on the complaint, is in favor of the plaintiff and against them in the principal sum of $2,536,775.70.

ORDERED that the judgment is affirmed, with costs.

The plaintiff demonstrated its entitlement to judgment as a matter of law on the complaint seeking reimbursement from the defendants pursuant to two indemnity agreements. The plaintiff met its prima facie burden by submitting the underlying disputed performance and payment bonds, the indemnity agreements, the completion contract, and itemized statements of loss and expense demonstrating that the defendants had a duty to reimburse the plaintiff for its expenditures in ensuring the completion of the underlying work, and also that the amount it paid was reasonable (*see Lee v T.F. DeMilo Corp.*, 29 AD3d 867, 868). In opposition, the defendants failed to raise a triable issue of fact (*id.*). Consequently, the Supreme Court properly granted the plaintiff's motion for summary judgment on the complaint.

BALKIN, J.P., ENG, HALL and SGROI, JJ., concur.

2010-11684 DECISION & ORDER ON MOTION

Travelers Casualty and Surety Company of America, respondent, v Barry Stransky, et al., appellants.

(Index No. 7359/08)

Motion by the respondent, inter alia, to dismiss an appeal from a judgment of the Supreme Court, Queens County (Kitzes, J.), entered December 28, 2010, on the ground that it had been rendered academic by a settlement entered into between the parties on January 24, 2011, and the filing of a satisfaction of the relevant judgment. By decision and order on motion of this Court dated August 22, 2011, that branch of the plaintiff's motion which was to dismiss the appeal was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

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

ORDERED that the branch of the motion which is to dismiss the appeal is denied since the stipulation of settlement expressly reserved the appellants' right to seek appellate review of the award of summary judgment to the respondent.

BALKIN, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court