

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

945

CA 10-00527

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, LINDLEY, AND GREEN, JJ.

CRANE-HOGAN STRUCTURAL SYSTEMS, INC.,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ESLS DEVELOPMENT, LLC, DEFENDANT-APPELLANT.

ESLS DEVELOPMENT, LLC, THIRD-PARTY
PLAINTIFF,

V

PIERCE ENGINEERING, P.C., THIRD-PARTY
DEFENDANT-RESPONDENT.

D'AGOSTINO, LEVINE, LANDESMAN & LEDERMAN, LLP, NEW YORK CITY (BRUCE H. LEDERMAN OF COUNSEL), AND SUGARMAN LAW FIRM, SYRACUSE, FOR DEFENDANT-APPELLANT.

GATES & ADAMS, P.C., ROCHESTER (RICHARD T. BELL, JR., OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

HARTER SECREST & EMERY LLP, ROCHESTER (JESSICA M. PATRICK OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (Brian F. DeJoseph, J.), entered December 29, 2009. The judgment was entered in favor of plaintiff upon its motion for summary judgment.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this breach of contract action seeking, inter alia, payment for work that it performed on a parking garage owned by defendant-third-party plaintiff (defendant). Supreme Court, inter alia, granted plaintiff's motion for summary judgment on the breach of contract cause of action and denied defendant's cross motion to compel plaintiff to comply with discovery demands and for summary judgment dismissing the complaint to the extent that it sought payment "in excess of the contract sum." The court subsequently granted defendant's motion for leave to reargue its opposition to plaintiff's motion and adhered to its prior determination, but it appears that no order was ever entered on that motion. However, a final monetary judgment was entered thereafter. Although defendant

appeals from the court's initial order and judgment, we exercise our discretion to treat the notice of appeal as valid and deem the appeal as taken from the final judgment (see CPLR 5520 [c]; *McLaughlin v Midrox Ins. Co.* [appeal No. 2], 70 AD3d 1463, 1464-1465; *Tambe Elec., Inc. v Home Depot U.S.A., Inc.*, 49 AD3d 1161). We affirm for reasons stated in the decision at Supreme Court underlying the initial order and judgment and for reasons stated in the decision at Supreme Court granting defendant's motion for leave to reargue.

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court