

<b>P.A. Building Company v City of New York</b>
2002 NY Slip Op 30070(U)
May 10, 2002
Supreme Court, New York County
Docket Number: 0108777/1994
Judge: Joan Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. JOAN A. MADDEN  
J.S.C. Justice

PART 11

P.A. Building Company

INDEX NO. 108777/9

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

City of NY

- v -

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**SCANNED**

MAY 15 2007

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is determined in  
accordance with the annexed decision and  
order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 5/10/07 \_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 11

..... X

P.A. BUILDING COMPANY,

Plaintiff,

-against-

Index No. 108777/94

THE CITY OF NEW YORK,

Defendant.

-----X

**Joan A. Madden, J.:**

Defendant City of New York moves for an order “resetting” this Court’s decision and order dated December 18,2001, to: 1) correct the amount of the real estate tax refund awarded to defendant City to \$162,938.36; 2) grant a judgment to defendant City in the amount of \$266,923.23, for the overpayments the City made to plaintiff for rent escalations based on asbestos abatement expenditures from 1988 through 1993; 3) grant defendant City a recovery against plaintiff for the credits for over billing from 1988 through 1993, conceded by plaintiff in the amount of \$66,825.00; and 4) grant defendant City prejudgment interest on the items for which defendant is entitled to judgment.

In response to the motion, plaintiff agrees that \$162,938.36 is the amount of the real estate tax refund, and that the Court’s order should be corrected as such. Plaintiff also agrees that to the extent the City is entitled to recover this amount, prejudgment interest shall run from October 10, 1997. As to the escalations charges based on asbestos abatement expenditures, plaintiff agrees only as to the amount of \$243,297.58, which is for 1988 through 1992; plaintiff

disputes the amount for 1993, as well as the date from which interest should run on this portion of the overcharge counterclaim. In all other respects, plaintiff disputes the relief sought by defendant in this motion.

The motion is granted to the extent of correcting the typographical error in the third and final ordered paragraph of this Court's decision and order dated December 18, 2001, to state that amount that defendant City is entitled to on its Second Counterclaim is \$162,938.36, and adding to that ordered paragraph that defendant City is entitled to prejudgment interest on this amount from October 10, 1997.

The motion is further granted to the extent of adding to the second ordered paragraph, that defendant City is entitled a judgment against plaintiff P.A. Building Company, on a portion of its First Counterclaim in the amount of \$243,297.58, which represents an undisputed portion of the overcharges relating to asbestos abatement expenditures for 1988 through 1992. To the extent the parties dispute the amount due, if any, for overcharges relating to asbestos abatement expenditures for 1993, as well as the date from which interest shall run on the entire asbestos abatement portion of the First Counterclaim, these issues are reserved for determination at trial, together with the balance of defendant's First Counterclaim. In all other respects, defendant's motion is denied.

Accordingly, it is hereby

ORDERED that the defendant City of New York's motion is granted to the extent that the third and final ordered paragraph of this Court's decision and order dated December 18, 2001 is corrected so that the amount which defendant City of New York is entitled to on its Second Counterclaim against plaintiff P.A. Building Company is \$162,938.36, and the Clerk is directed

to enter judgment accordingly, together with prejudgment interest from October 10,1997; and it is further

ORDERED that defendant City of New York's motion is granted on consent to the extent of adding to the second ordered paragraph, that defendant City of New York is entitled a judgment against plaintiff P.A. Building Co., on a portion of its First Counterclaim in the amount of \$243,297.58, which represents an undisputed portion of the overcharges relating to asbestos abatement expenditures for 1988 through 1992, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that to the extent the parties dispute the amount due, if any, for overcharges relating to asbestos abatement expenditures for 1993, as well as the date from which interest shall run on the entire asbestos abatement portion of the First Counterclaim, these issues are reserved for determination at trial, together with the balance of defendant City's First Counterclaim; and it is further

ORDERED that in all other respects, defendant City's motion is denied.

This constitutes the decision and order of the Court.

DATED: May 10, 2002

ENTER:

  
\_\_\_\_\_  
J.S.C.