

**Araujo v Tiano's Construction, Corp.**

2005 NY Slip Op 30272(U)

April 18, 2005

Supreme Court, New York County

Docket Number: 0603101/2001

Judge: Richard F. Braun

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. RICHARD F. BRAUN

PART 23

*J.S.C.*

ARAUO, TEOFILO

INDEX NO. 603101/01

MOTION DATE 1/27/05

MOTION SEQ. NO. 004

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

- v -

TIANO'S CONSTRUCTION CORP.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion ~~to~~ for SUMMARY JUDGMENT,  
CROSS MOTION TO STRIKE ANSWER.

PAPERS NUMBERED

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

1, 2

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

3, 4, 5

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

6, 7, 8, 9

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is granted to the extent of awarding summary judgment to defendants Tiano's Construction Corp. and Unibehrens Mutual County Company dismissing the First Amended Complaint against them, and it is further ORDERED that the Clerk shall enter judgment accordingly, and it is further

ORDERED that the remaining claims are severed and shall continue and it is further

ORDERED that the cross motion was withdrawn by stipulation, dated January 27, 2005.

This constitutes the decision and order of this date. See separate Opinion.

FILED

APR 20 2005

Dated: New York, New York, April 18, 2005

*E. W. T. B. R.*

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 23**

----- X  
TEOFILO ARAUJO, FRANCISCO CONCEPCION,  
LORENZO FIGUEROA, ANDRES GONZALES, JOSE  
MARRERO, CARLOS MONTALVO, FELIX MATOS  
also known as WILFREDO ESCRIBANO, JOSE DELIO  
MUÑOZ, RAMON PAULINO, DOROTEO  
POLANCO, DANILO VILLA, STEVEN HALL and  
RALPH HALL,

Index No. 603101/01

**OPINION**

Plaintiffs,

-against-

TIANO'S CONSTRUCTION, CORP., MITRANI  
PLASTERERS CO., INC., TIANO CONSTRUCTION  
MITRANI CESARE GENERAL PARTNERSHIP,  
PYTHAGORAS GENERAL CONTRACTING CORP.,  
GBE ALASIA CONTRACTING CORP.,  
LUMBERMEN'S MUTUAL CASUALTY COMPANY,  
SAFECO INSURANCE COMPANY OF NORTH  
AMERICA, ST. PAUL MERCURY INSURANCE  
COMPANY and JOHN DOE BONDING COMPANY,  
whose identity is presently unknown.

Defendants.

-and-

LUMBERMENS MUTUAL CASUALTY COMPANY,

Defendant/Third Party Plaintiff,

-against-

EFRAIN J. RAMOS, MARIBEL RAMOS, ANTHONY  
MITRANI, CESARE MITRANI, PHYLIS MITRANI,  
JAMES CARRION, NANCY MITRANI,

Third-Party Defendants.

----- X

**RICHARD F. BRAUN, J.:**

This is an action for breach of contract, quantum meruit, unjust enrichment, and suretyship.  
Defendants Lumbermens Mutual Casualty Company (Lumbermens) and Tiano's Construction, Corp.  
(Tiano's) jointly move for summary judgment against plaintiffs. Plaintiffs cross-moved to strike the

\* 3 ] .  
answer of certain defendants. The cross motion was withdrawn by stipulation.

The cause of action for breach of contract against defendants Tiano's and Lumbermens must be dismissed (*see Gonzalez v D&S Zaffuto Joint Venture*, 271 AD2d 356 [1<sup>st</sup> Dept 2000]). Causes of action for quantum meruit and unjust enrichment both raise the same claim (*see Martin II. Bauman Assocs. v H & M Intl. Transp.*, 171 AD2d 479, 483-484 [1<sup>st</sup> Dept 1991]). Such causes of action also cannot stand here (*see Gonzalez v D&S Zaffuto Joint Venture*, 271 AD2d 356, *supra*). Therefore, the motion has been granted by this court's separate decision and order of this date to the extent of awarding summary judgment to defendants Tiano's and Lumbermens dismissing the first amended complaint against those defendants.

Dated: New York, New York  
April 18, 2005



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RICHARD F. BRAUN, J.S.C.

FILED  
APR 20 2005  
CLERK OF COURT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

TEOFILO ARAUJO, FRANCISCO CONCEPCION, LORENZO FIGUEROA, ANDRES GONZALES, JOSE MARRERO, CARLOS MONTALVO, FELIX MATOS also known as WILFREDO ESCRIBANO, JOSE DELIO MUÑOZ, RAMON PAULINO, DOROTEO POLANCO, DANILO VILLA, STEVEN HALL and RALPH HALL,

Plaintiffs,

- against -

TIANO'S CONSTRUCTION, CORP., MITRANI PLASTERERS CO., INC., TIANOS CONSTRUCTION MITRANI CESARE GENERAL PARTNERSHIP, PYTHAGORAS GENERAL CONTRACTING CORP., GBE ALASIA CONTRACTING CORP., LUMBERMENS MUTUAL CASUALTY COMPANY, SAFECO INSURANCE COMPANY OF NORTH AMERICA, ST. PAUL MERCURY INSURANCE COMPANY and JOHN DOE BONDING COMPANY, whose identity is presently unknown,

Defendants.

Index No. 603101/01  
Hon. Richard F. Braun,  
J.S.C.

**STIPULATION**

**IT IS HEREBY STIPULATED, CONSENTED AND AGREED** by and between

counsel for the undersigned parties as follows:

1. Joint Movants, Lumbermens Mutual Casualty Company ("Lumbermens") and Tiano's Construction Corp. ("Tiano's") hereby withdraw Point II of their Brief in Support of their Joint Motion of Summary Judgment against the Plaintiffs dated November 14, 2003.
2. Respondent Plaintiffs hereby withdraw Points IV, V and VI from their Memorandum of Law in Opposition to the Joint Motion for Summary Judgment and in Support of Plaintiffs Cross Motion to Strike Defendants' Answers.
3. Lumbermens and Tiano's hereby withdraw Points IV and V of their Reply Brief in Support of their Joint Motion of Summary Judgment against the Plaintiffs.
4. The parties acknowledge that discovery with respect to the Seward Park public housing project has been completed with respect to the funding source issue. As such, the arguments contained in the aforementioned papers shall be limited to the Seward Park public housing project only.
5. The Plaintiffs acknowledge service upon them of Lumbermens' Amended Answer to the Amended Complaint, containing an additional separate defense based upon

federal pre-emption and the Davis-Bacon Act.

- 6. The Plaintiffs acknowledge service upon them of Tiano's' Amended Answer to the Amended Complaint, containing an additional separate defense based upon the Davis-Bacon Act.

7. Plaintiffs cross-motion is withdrawn

*[Handwritten initials/signature]*

IT IS FURTHER STIPULATED AND AGREED that a facsimile or photocopy of this 1/21/05

signed Stipulation may be treated as an original signed Stipulation, and that this Stipulation may be signed in filed in counterparts so long as the filed document has attached signature pages containing the signatures of all counsel set forth below.

Dated: New York, New York  
October 11, 2004

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