

**Judlau Contr. Inc. v Metropolitan Transp. Auth.  
Capital Constr.**

2019 NY Slip Op 30811(U)

March 26, 2019

Supreme Court, New York County

Docket Number: 155472/2018

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 8

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JUDLAU CONTRACTING INC.

**DECISION, ORDER AND  
JUDGMENT**

INDEX NO.: 155472/2018  
MOT SEQ.: 001 AND 002

Petitioner(s),

-against-

METROPOLITAN TRANSPORTATION  
AUTHORITY CAPITAL CONSTRUCTION,

Present:  
Hon. Lynn R. Kotler, J.S.C.

Respondent(s).  
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Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
N/Petition, N/Petition (amended), Petition, Memo of Law .....	1-19
Answer, Memo of Law in opp .....	20-23
N/Petition (amended), Petition (amended), Memo of Law .....	25-41
N/Motion (002), Aff in support .....	45-53
Aff in opp .....	55-57
Reply Aff .....	58

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This is an Article 78 proceeding arising from a construction project entered into between the parties regarding the 72<sup>nd</sup> Street Subway Station. Petitioner now seeks an order vacating and remanding the February 12, 2018, final decision, of Daniel Iannuzzi, P.E., acting Chief Engineer of the MTACC (the "Decision"), which denied petitioner's request to the Chief Engineer to reverse a finding of the Project's construction manager dated May 17, 2017 denying petitioner's request for a compensation in connection with an Additional Work Order ("AWO") for additional control work allegedly required to substantially complete the Project by December 31, 2016.

In relevant part, as part of its Contract Work, petitioner was required to furnish, install and test a computer based control system known as the Building Management System ("BMS") to monitor the heating, ventilation and air conditioning (HVAC) mechanical systems at the station. Pursuant to Article 8.03(C) of the parties' contract, petitioner initiated a dispute to the Chief Engineer, who was designated as arbiter under the Contract, by submitting a Dispute dated July 5, 2017. Petitioner argues that the Decision should be reversed because it is (i) arbitrary and capricious; (ii) lacks a rational basis as it ignored the facts, documents submitted in JCI's Notice of Dispute, and the explicit terms of the Contract and the Acceleration Agreement, (iii) fails to apply the relevant and controlling New York law; and (iv) was rendered in violation of JCI's due process rights.

Respondent has answered the petition.

In motion sequence number 002, petitioner moves for leave to amend the petition to add the Metropolitan Transportation Authority ("MTA") and the New York City Transit Authority ("NYCTA") as additional respondents. Petitioner explains that the motion to amend is necessitated by respondent's answer which asserted, *inter alia*, that petitioner failed to bring this Article 78 proceeding against the MTA and NYCTA which are indispensable parties. Respondent opposes the motion to amend.

The court hereby consolidates both motion sequences for its consideration and disposition in this single decision, order and judgment. The court's decision follows.

At the outset, respondent is correct that the scope of the court's review of the Decision is limited by the terms of the parties' contract to only whether the Decision was arbitrary and capricious or lacked a rational basis (see i.e. *NAB Constr. Corp. v*

*Metropolitan Transp. Auth.*, 180 AD2d 436 [1st Dept 1992]). Therefore, petitioner's arguments on any other grounds are hereby rejected by the court.

For the reasons that follow, the petition must be denied. Petitioner claims that the failure of respondent's Systems Contractor to timely furnish a functional local area network ("LAN") delayed its testing of the BMS which in turn forced petitioner to perform accelerated work at a premium cost. However, the Chief Engineer found that petitioner was not entitled to compensation for the AWO because petitioner contributed to and/or caused the delay to LAN functionality. Respondent argues that the Decision should be upheld and further maintains that even if the delays were solely caused by the its contractor, petitioner is prevented by the relevant contracts from seeking monetary compensation on these facts.

The court has reviewed the record and finds sufficient factual support for the Decision. Indeed, the Chief Engineer cited a number of specific instances which support his conclusion that petitioner caused and/or contributed to the delay petitioner now seeks to recover for. Indeed, the contract provided that petitioner was required to coordinate with respondent's Systems Contractor. It can be no surprise that the documented instances of petitioner's failure to meet its deadlines would cause a ripple effect thereby necessitating extra costs for petitioner to meet its obligations on time.

The Chief Engineer further found that based upon the Acceleration Agreement, petitioner received an extension of time to perform the underlying work and waived any claim for damages. To the extent that petitioner argues that the Chief Engineer's determination is based upon a mistake of law or a misinterpretation of the contract, such claims are not preserved for this court's review (*Naba Constr. Corp.*, *supra* at 437).

Since the court finds that the Decision is not irrational, arbitrary or capricious, the petition must be denied.

In light of this result, the motion to amend is denied as moot.

In light of the foregoing, it is

**ORDERED** that motion sequence number 002 is denied as moot; and it is further

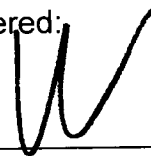
**ADJUDGED** that the petition is denied and the proceeding is dismissed.

This constitutes the decision, order and judgment of the court.

Dated: New York, New York

3-26-19

So Ordered:



Hon. Lynn R. Kotler, J.S.C.