

Five Star Contr. Cos., Inc. v Fashion Inst. of Tech.
2020 NY Slip Op 31050(U)
April 7, 2020
Supreme Court, New York County
Docket Number: 650707/2013
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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FIVE STAR CONTRACTING COMPANIES, INC.,

Index No.: 650707/2013

Plaintiff,

ORDER

-against-

FASHION INSTITUTE OF TECHNOLOGY,

Defendant.

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JENNIFER G. SCHECTER, J.:

The parties seek to clarify two holdings in the court’s March 3, 2020 summary judgment decision (Dkt. 429 [the SJ Decision]; *see* Dkts. 433, 434). They are in agreement on the first issue – that the extra 1% interest on excess retainage is monthly interest. On the second issue, they agree that the court’s holding in the last sentence of the first paragraph on page 27 regarding Five Star’s lost profits should be clarified (subject to FIT’s right to appeal) to read: “Five Star’s lost profit damages should be computed based on Five Star’s costs to complete the work actually performed by the replacement contractor that was within Five Star’s scope (i.e. the costs that plaintiff would have incurred), plus 20% of the amount paid by FIT for all extra work” (*see* Dkt. 433 at 2). That said, the court did not purport to opine on whether any extra work performed by the replacement contractor was foreseeable, and while Five Star may well be able to prove the foreseeability of such work at trial, the court did not and will not grant summary judgment on foreseeability.

With those clarifications, it is ORDERED that the SJ Decision is amended as set forth above and the decretal paragraph on page 29 directing the Clerk to enter judgment is stricken and replaced with the following directive: the Clerk is directed to enter judgment in favor of Five Star and against FIT in the amount of \$652,643.48 plus 9% pre-judgment

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interest from September 6, 2012 to the date judgment is entered, plus an additional 1% interest per month on \$89,893.24 for the same period; and it is further

ORDERED that the parties shall update the court by email on the status of their mediation by July 8, 2020 at noon.

Dated: April 7, 2020

ENTER:



Jennifer G. Schechter, J.S.C.