

At an I.A.S. Trial Term, Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 8 day of March 2016

P R E S E N T :

Hon. Knipel
Justice

M.B. DIN CONSTRUCTION

Plaintiff(s)

Cal. No.

Index No.

501269/2013

- against -

DELTA IRON

Defendant(s)

The following papers numbered 1 to read on this motion

Papers Numbered

Notice of Motion - Order to Show Cause

and Affidavits (Affirmations) Annexed

Answering Affidavit (Affirmation)

Reply Affidavit (Affirmation)

Affidavit (Affirmation)

Pleadings - Exhibits

Stipulations - Minutes

Filed Papers

Upon the credible evidence adduced at trial verdict is rendered in defendant's favor and all claims are dismissed.

[See minutes for findings of fact and conclusions of law.]

For Clerks use only

MG

MD

Motion Seq. #

EJV-rev 11-04

ENTER

J.S.C.

HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE

FILED
KINGS COUNTY CLERK
2016 MAR 11 AM 9:05

Exhibit Sheet

Trial Term Part COMM 4. Justice KNIPER
 Title MB DIN CONSTRUCTION V. DELTA INC. Court Reporter(s) NANCY MESSANO
 Calendar No. _____ Index No. 501269/13
 Date(s) of Trial 3-7-16 — 3-8-16

PLAINTIFF

DEFENDANT

Number	Identification	Evidence	Description of Exhibit	Letter	Identification	Evidence	Description of Exhibit
1	✓	✓	Contract bet. Parties	A	✓	✓	Contract (MB Din / DDC)
6	✓	✓	Proof of Claim	B	✓	✓	Request for Appraisal letter.
7	✓			C	✓	✓	Letter for Paid to DDC
1226	✓	✓	Pictures of Job Site	D	✓	✓	Subcontract Certificate
13A	✓	✓	Designs for Job.	E	✓	✓	Notice of Default by DDC
28	✓	✓	Charge Order (DDC DELTA)	F	✓	✓	Memo DDC / American Safety
2	✓	✓	Payment Bond.	G	✓	✓	Contract American Safety / Delta / DDC
3	✓	✓	Cover letter of Notice of Claim	H	✓	✓	Requ. #12.
				I	✓	✓	Beacon's Job Assessment
A1	✓	✓	Contract b/ Deann & MB Din	J	✓	✓	Proposals Bernini
A2	✓	✓	Assignments	K	✓	✓	Proposals BIK
3/8/16 33	✓	✓	Daily Site Reports	L	✓	✓	Proposals Bau
				M	✓	✓	Proposal - Rockmore
				N	✓	✓	Rockmore Contract
				O	✓	✓	AH. Proposal - Rockmore
				P	✓	✓	Change Order
				Q	✓	✓	
COURT EXHIBITS							

R ✓ ✓
S ✓ ✓ Beam Con.
T ✓ ✓ Window Replacement.
3/8/16 U ✓ ✓ Pictures from Project.
V ✓ ✓ Swing Staging
W ✓ ✓ Payment Schedule to America
X ✓ ✓ Unpaid Union dues
Y ✓ ✓ Remedial & Completion Scope
Z ✓ ✓ Beacon's invoices
AA ✓ ✓ Beacon's Management Cost.
BB ✓ ✓ Cost Calculations
CC ✓ ✓ " "
DD ✓ ✓ Delta Contractor Paid Breat
EE ✓
FF ✓

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: TRIAL TERM PART COMM 4

3 - - - - - X

4 MB DIN CONSTRUCTION INC.,,

5 Plaintiff,

INDEX NUMBER:

6 - against -

501269/2013

7 DELTA IRON & CONSTRUCTION, INC., AMERICAN SAFETY
8 CASUALTY INSURANCE COMPANY, CITY OF NEW YORK & JOHN
9 DOES 1-10 AND OTHER SIMILARLY SITUATED,

10 Defendants.

11 - - - - - X

12 360 Adams Street
13 Brooklyn, New York 11201
14 March 8, 2016
15 Decision

16 BEFORE:

17 HONORABLE LAWRENCE KNIPEL, Justice

18 APPEARANCES:

19 KING & KING, LLP
20 Attorneys for the Plaintiff
21 629 5th Avenue
22 Pelham, New York 10803
23 BY: PETER M. KUTIL, ESQ., Of Counsel

24 WESTERMANN, SHEEY, KEENAN, SAMAN &
25 AYDELOTT, LLP
Attorneys for the Defendant American Safety
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BY: ROBERT FRYMAN, ESQ., Of Counsel
MICHAEL J. ROSENTHAL, ESQ., Of Counsel

ANDREW MUCHMORE, ESQ.,
Attorney for the Intervening Plaintiff
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Brooklyn, New York 11211

NANCY A. MESSANO
Official Court Reporter

Proceedings

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1 THE COURT: All right, thank you, Counsel. Okay.
2 Let me -- I am going to give you a decision on this right
3 from the bench. I will write something out.

4 Okay, upon the credible evidence adduced at trial
5 this Court makes the following findings of fact and reaches
6 the following conclusions of law. On July 30, 2010, MB
7 Din entered into a number of contracts with Delta Iron for
8 masonry related subcontracting work at 1605 Nelson Avenue
9 in the Bronx. For identical work at the same premises one
10 contract which contains a contract price of \$1.7 million,
11 another contract contains a contract price of \$1.2 million
12 which is typed in apparently later modified to sum of
13 \$825,000 which was written by hand.

14 To complicate matters even further plaintiff MB
15 Din submitted to the City of New York, Department of Design
16 and Construction a request for approval of this work for
17 the sum of \$725,000. The DDC which is the Department of
18 Design and Construction eventually approved plaintiff's
19 work proposal for the proposed sum of \$725,000 and the New
20 York City Department of Labor Services issued a quote less
21 than \$750,000 subcontract certificate.

22 Work then proceeded and plaintiff was eventually
23 removed from performance when the services of its general
24 contractor Delta were terminated. It is uncontested that
25 the plaintiff received payments in the sum of \$644,000

nam

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