

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PART 61

Justice

Index Number : 150539/2011
A&E METAL PRODUCTS, LTD
vs
RJM 4 94TH STREET, LLC
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing, it is ordered that this motion by the defendant RJM/EM 4 East 94th Street, LLC to dismiss the complaint pursuant to CPLR 3211 (a)(i), (a) (5) and 3212(e) for summary judgment on its counterclaim for willful exaggeration is denied.

The lien waiver signed by plaintiff pertains to the second contractor who took over the job, 94th Street Construction. By sworn affidavit the President of plaintiff states that the lien waiver with respect to 94th St Construction was signed acknowledging the amount paid, \$73,950.78.

However, plaintiff refused to sign a lien waiver with the original contractor on the project, Ball Construction because according to plaintiff monies were owed by the original contractor.

On this record defendant movant has not established willful exaggeration pertaining to alleged \$200,000 owed to plaintiff by Ball Construction.

[THIS IS A CONFORMED DECISION]

Dated: 4/5/12

HON. ANIL C. SINGH
SUPREME COURT JUSTICE
NON-FINAL DISPOSITION

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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