

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-01071

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, CARNI, AND GORSKI, JJ.

J.K. TOBIN CONSTRUCTION CO., INC.,
PLAINTIFF-RESPONDENT-APPELLANT,

V

MEMORANDUM AND ORDER

DAVID J. HARDY CONSTRUCTION CO., INC.,
DEFENDANT-RESPONDENT,
AND PAT J. BOMBARD, DEFENDANT-APPELLANT.

DAVID J. HARDY CONSTRUCTION CO., INC.,
THIRD-PARTY PLAINTIFF,

V

BOMBARD CAR CO., INC., THIRD-PARTY
DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

COTE, LIMPert & VAN DYKE, LLP, SYRACUSE (THEODORE H. LIMPert OF
COUNSEL), FOR DEFENDANT-APPELLANT AND THIRD-PARTY DEFENDANT-APPELLANT.

HISCOCK & BARCLAY, LLP, SYRACUSE (RICHARD K. HUGHES OF COUNSEL), FOR
PLAINTIFF-RESPONDENT-APPELLANT.

RIEHLMAN SHAFER AND SHAFER, TULLY (D. CHRISTIAN FISCHER OF COUNSEL),
FOR DEFENDANT-RESPONDENT.

Appeal and cross appeal from an order of the Supreme Court,
Onondaga County (Deborah H. Karalunas, J.), entered February 15, 2008
in an action to foreclose on a mechanic's lien. The order denied
plaintiff's motion for partial summary judgment on the second and
third causes of action against defendant David J. Hardy Construction
Co., Inc., granted plaintiff's motion for partial summary judgment on
the first cause of action against defendants, denied the cross motion
of defendant Pat J. Bombard and third-party defendant to discharge the
mechanic's lien, and granted in part the cross motion of defendant
David J. Hardy Construction Co., Inc. for leave to amend its answer.

It is hereby ORDERED that said appeal is unanimously dismissed
and the order is otherwise modified on the law by granting the motion
of plaintiff for partial summary judgment on the second and third
causes of action and by denying in its entirety the cross motion of
defendant David J. Hardy Construction Co., Inc. and as modified the
order is affirmed without costs, and

It is further ORDERED that judgment be entered in favor of plaintiff and against defendant David J. Hardy Construction Co., Inc. in the amount of \$121,918.21, together with interest at the rate of 9% per annum commencing September 30, 2006, and costs and disbursements.

Same Memorandum as in *J.K. Tobin Constr. Co., Inc. v David J. Hardy Constr. Co., Inc.* ([appeal No. 2] ____ AD3d ____ [July 10, 2009]).

Entered: July 10, 2009

Patricia L. Morgan
Clerk of the Court