

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

869

CA 12-00146

PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ.

GENESEE/WYOMING YMCA, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

BOVIS LEND LEASE LMB, INC., DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

HANCOCK ESTABROOK, LLP, SYRACUSE (JOHN G. POWERS OF COUNSEL), FOR
DEFENDANT-APPELLANT.

DAMON MOREY LLP, BUFFALO (BRIAN D. GWITT OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John A. Michalek, J.), entered January 3, 2012 in a breach of contract action. The order denied the motion of defendant for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting that part of the motion of Bovis Lend Lease LMB, Inc. for summary judgment dismissing the second cause of action in the complaint and as modified the order is affirmed without costs.

Same Memorandum as in *Genesee/Wyoming YMCA v Bovis Lend Lease LMB, Inc.* ([appeal No. 1] ___ AD3d ___ [Sept. 28, 2012]).

Entered: September 28, 2012

Frances E. Cafarell
Clerk of the Court