



Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M125031
E/sl

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2010-09892

DECISION & ORDER ON MOTION

Richard J. Erickson, appellant, v Cross Ready Mix, Inc., et al., defendants-respondents, Turner Construction Corp., defendant third-party plaintiff-respondent; Commodore Construction Corp., third-party defendant-respondent.

(Index No. 9022/09)

Motion by the appellant to enlarge the record on an appeal from an order of the Supreme Court, Nassau County, dated September 16, 2010, to include certain motion papers, to strike the brief filed by Elite Ready Mix Corporation or stated portions of that brief, to enlarge the time to serve and file a reply brief, and to impose a sanction upon Elite Ready Mix Corporation. Cross motion by Elite Ready Mix Corporation to dismiss the appeal as untimely and barred by waiver, and to preclude the appellant from filing further motions or appeals.

Upon the papers filed in support of the motion and the cross motion, and the papers filed in opposition thereto, it is

ORDERED that the branch of the motion which is to enlarge the record is granted, and on or before September 19, 2011, the appellant shall serve and file a supplemental record containing the papers attached to the appellant's motion papers as Exhibits B and C; and it is further,

ORDERED that the branch of the motion which is to strike stated portions of the brief filed by Elite Ready Mix Corporation is granted and the following material is stricken from that brief:

- (1) the word "four" on the first line of page 4;
- (2) all of the material on page 8; and

August 29, 2011

ERICKSON v CROSS READY MIX, INC.

Page 1.

(3) the word "four" on the fourth line of page 13, and it is further,

ORDERED that on or before September 12, 2011, Elite Ready Mix Corporation shall either remove that material from the copies of its brief filed with the Clerk of the Court, or serve and file a replacement brief that does not contain the stricken material; and it is further,

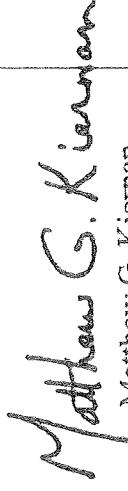
ORDERED that the branch of the motion which is to enlarge the time to serve and file a reply brief is granted, the time to serve and file the reply brief is enlarged until September 26, 2011, and the reply brief must be served and filed on or before that date; and it is further,

ORDERED that the motion is otherwise denied; and it is further,

ORDERED that the cross motion is denied.

MASTRO, J.P., DILLON, CHAMBERS and AUSTIN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court