

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU

Present: HON. ZELDA JONAS  
Justice

TRIAL/IAS PART 17

ANDREW BRAUN a/k/a ANDREW L.  
BRAUN and VICKY BRAUN a/k/a  
VICKY LEVIN BRAUN,

Plaintiffs,

Index No. 2278/05

- against -

Sequence No. 5

Motion Date: November 23, 2005

MERRIWEATHER GOOD, LTD., a/k/a  
MERRIWEATHER GOOD & ASSOCIATES,  
LTD., PARISH MERRIWEATHER,  
CMB CONTRACTING, INC., d/b/a  
MID ISLAND CONTRACTORS,

Defendants.

The following papers read on this motion:

Notice of Motion .....	1
Affidavit in Opposition .....	2
Reply Affirmation .....	3
Affirmation in Support .....	4

The motion by defendant, CMB Contracting, Inc., for summary judgment pursuant to CPLR §3212 dismissing the complaint against defendant, CMB Contracting, Inc., and for leave to discontinue the counterclaim against plaintiffs is granted.

Plaintiffs have sued CMB Contracting, Inc., as a co-general contractor with co-defendant Merriweather Good, Ltd., for breach of contract in the renovation of plaintiffs' home. Defendant, CMB Contracting, Inc., claims that it is was only a

subcontractor for the general contractor, Merriweather Good, Ltd., and was only responsible for excavation and foundation work and not for the work claimed by plaintiffs to be shoddy. Defendant, CMB Contracting, Inc., has presented documentary evidence showing that it was not the general contractor and never entered into any contract with plaintiffs nor received any payments from plaintiffs. The written contract for the improvements on plaintiffs' property (Notice of Motion, Exhibit A) is between co-defendant, Merriweather Good, Ltd., and plaintiffs for the price of \$111,500.00. The co-defendant had acknowledged by letter that CMB Contracting, Inc., was not a co-general contractor but was a subcontractor engaged to do work of excavation and installation of the required portions of the foundation (Notice of Motion, Exhibit B). Defendant, CMB Contracting, Inc., submitted an invoice to co-defendant, Merriweather Good, Ltd., for the work performed and not to plaintiffs (Notice of Motion, Exhibit C) and received payment in full from Merriweather Good, Ltd. There is no allegation by plaintiffs that there was any oral or written agreement with CMB Contracting, Inc., or that CMB Contracting, Inc., performed any other work than the excavation and foundation work. Nor does plaintiff, Andrew Braun, deny that all payments made by plaintiff were to his general contractor, Merriweather Good, Ltd.

Accordingly, defendant, CMB Contracting, Inc., has shown entitlement to summary judgment as a matter of law.

Dated: 2/1/04

**ENTERED**

FEB 06 2006

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

*[Signature]*

J.S.C.