

14 N.Y.2d 938; 200 N.E.2d 870;
252 N.Y.S.2d 331, *; 1964 N.Y. LEXIS 1028, **

Feingold Electric, Inc., Appellant, v. Highbar Construction Corp. et al., Respondents

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

14 N.Y.2d 938; 200 N.E.2d 870; 252 N.Y.S.2d 331; 1964 N.Y. LEXIS 1028

July 9, 1964, Submitted

July 10, 1964, Decided

PRIOR HISTORY: [**1] Reported below, *21 A D 2d 855*.

Motion for leave to appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered June 18, 1964, which unanimously affirmed an order of the Supreme Court at Special Term (George Tilzer, J.), entered in Bronx County, (a) granting a motion by defendants insofar as it sought the dismissal of the complaint in an action to foreclose a mechanic's lien and sought the cancellation of the notice of said lien, (b) ordering that the dismissal of the complaint be without prejudice to the service of a complaint within 10 days after service of a copy of the order, said complaint to seek a money judgment for the contract price, and (c) ordering that the determination of defendants' motion insofar as it sought a consolidation of the action with another action between the parties, pending in the Supreme Court, Queens County, was unnecessary at the time. Motion for a stay of execution of the order sought to be appealed from, pending the hearing and determination of the appeal.

HEADNOTES

Appeal -- Court of Appeals -- nonfinal order -- stay -- order which granted motion to dismiss complaint in action to foreclose mechanic's [2] lien, dismissal being without prejudice to service of complaint seeking money judgment for contract price, is not final -- motion for leave to appeal therefrom dismissed -- if motion were properly before it, Court of Appeals would deny on merits -- motion for stay of execution of order sought to be appealed from, pending hearing and determination of appeal, denied.**

COUNSEL: *Emanuel M. Cohn* and *D. George Paston* for motions.

Samuel Kirschenbaum opposed.

OPINION

Motion [*332] for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. If the motion were properly before it, the Court of Appeals would deny on the merits.

Motion for stay denied.