

# **Bond Case Briefs**

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## **PUBLIC CONTRACTS - NEW YORK**

### **Michael R. Gianatasio, PE, P.C. v. City of New York**

**Supreme Court, New York County, New York - August 26, 2016 - N.Y.S.3d - 2016 WL 4522061 - 2016 N.Y. Slip Op. 26270**

Construction company brought action against city, city administration for children's services (ACS), and service provider, asserting claims for breach of contract, quantum meruit, unjust enrichment, and fraudulent inducement, based on allegations that city and ACS failed to pay company full amount owed under two construction contracts.

The Supreme Court, Westchester County, granted city and ACS's motion to change venue to New York County. City, ACS, and provider moved to dismiss, and provider separately moved for sanctions against company.

The Supreme Court, New York County, held that:

- City was not estopped from challenging validity of contracts;
- City could not ratify contracts;
- City and ACS did not fraudulently induce company to enter into contracts;
- Service provider could not be held liable for city's and ACS's breach of contracts;
- Construction company could not maintain unjust enrichment claim against provider; and
- Sanctions against company were not warranted.

City's unlawful failure to abide by requirements of competitive bidding statute and procurement regulations in awarding contracts to construction company, and city's failure to pay company for work done and money outlaid, did not estop city from challenging validity of contracts as illegal; company assumed risk when it entered into contracts with city.

An illegal contract cannot be ratified by a municipality, even if the municipality already made partial payment and accepted some of the contract's benefits.

City and city administration for children's services (ACS) did not fraudulently induce construction company to enter into contracts that were illegal in that they were awarded in violation of the competitive bidding statute and procurement regulations; at time contracts were executed, ACS intended to pay company, company was paid much of the money due under the contracts, the non-payment arose from subsequent discovery of the contracts' illegality, and company could have, and should have been aware of law requiring contracts to be bid-out and it could thus not justifiably rely on ACS's invitation to work on no-bid contracts.