134 A.D.3d 508
Supreme Court, Appellate Division,
First Department, New York.

MINELLI CONSTRUCTION CO., INC., Plaintiff–Appellant,
v.
WDF INC., et al., Defendants–Respondents,
New York City Transit Authority, Defendant.

Dec. 15, 2015.

Attorneys and Law Firms

Law Offices of Melvin J. Kalish, PLLC, Mineola (Melvin J. Kalish of counsel), for appellant.

Rich, Intelisano & Katz, LLP, New York (Daniel E. Katz of counsel), for respondents.

Opinion

Order, Supreme Court, New York County (O. Peter Sherwood, J.), entered on or about February 18, 2015, which granted defendant WDF's motion for partial summary judgment dismissing that portion of the complaint's first cause of action seeking recovery of lost profits, unanimously affirmed, without costs.

The termination for convenience clause set forth in Article 28 of the parties' subcontract is enforceable, without regard to WDF's good faith, or lack thereof, in invoking it (*see Watermelons Plus, Inc. v. New York City Dept. of Educ.*, 76 A.D.3d 973, 974, 908 N.Y.S.2d 80 [2d Dept.2010]; ***531** *Triton Partners v. Prudential Sec.*, 301 A.D.2d 411, 411, 752 N.Y.S.2d 870 [1st Dept.2003]; *Big Apple Car v. City of New York*, 204 A.D.2d 109, 111, 611 N.Y.S.2d 533 [1st Dept.1994]).

The "automatic conversion" language set forth in Articles 26 and 28, providing for conversion of otherwise invalid default terminations into terminations for convenience, is clear on its face and also enforceable (*see Greenfield v. Philles Records*, 98 N.Y.2d 562, 569, 750 N.Y.S.2d 565, 780 N.E.2d 166 [2002]; *see also Crewzers Fire Crew Transp., Inc. v. United States*, 111 Fed.Cl. 148, 156 [2013] [construing substantially identical automatic conversion provision], *affd.* 741 F.3d 1380 [Fed.Cir.2014]).

We have considered plaintiff's remaining contentions and find them unavailing.

TOM, J.P., SWEENY, RENWICK, MANZANET–DANIELS, JJ., concur.

All Citations

134 A.D.3d 508, 20 N.Y.S.3d 530 (Mem), 2015 N.Y. Slip Op. 09205

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