

Also
No contract issued

STATE OF NEW YORK
COUNTY OF ST. LAWRENCE

JUSTICE COURT
VILLAGE OF CANTON

CYNTHIA DELEEL,

Plaintiff

- against -

JAMES O'NEILL,

Defendant

DECISION

Case appeared and
decision upheld
by Judge Nicandro

* } The defendant moved to dismissed the proceedings on the grounds that the wrong defendant was named. The defendant, James O'Neill, claimed that a corporation was the actual party with whom the contract was made with the plaintiff. There is no basis in the evidence produced at the hearing to establish that this claim was improperly brought against James O'Neil individually. There is no proof of the existence of the corporation nor were any of the contract documents, that is the proposal and the receipt for payment executed by or on behalf of a corporation nor did any documents contain the name of a corporation.

The plaintiff, through the acceptance of a proposal, contracted with the defendant for the defendant to supply labor, tools and equipment to strip an existing roof of it's shingles and to install new roofing to include roof and ridge vents, felt ice and water barrier and drip edge as necessary.

The defendant was given the opportunity to inspect the premises prior to the trial and had access to the premises for a half hour on the Saturday before the trial. A blue tarp was in place over the outside top of the roof preventing inspection of the outside. The defendant and his expert, Mr. Scott Hudson, examined the interior of the attic. The plaintiff testified that there was leakage problem with the roof about a month or so after it was installed. The defendant had come out upon first being called to repair leakage caused by roof vents. These roof vents were apparently picked up by the plaintiff at the direction of the defendant and installed by the defendant's workers. As it turns out the roof vents had been improperly manufactured with the louvres facing the wrong direction causing rain to come in when it rained. The roof vents were taken out and new roof vents were installed and the bathroom light fixture leakage problem corrected at the end of September 1997.

The plaintiff called the defendant and left messages at his telephone in November of 1997 and December of 1997. The defendant testified that he returned the calls and left a message on the plaintiff's telephone. The plaintiff testified that in her