

26 A.D.3d 317

(Cite as: 26 A.D.3d 317)

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N. Picco & Sons Contracting Co., Inc., Respondent  
v  
Board of Education of Bronxville School, Appellant.  
Supreme Court, Appellate Division, Second Department, New York

February 7, 2006

CITE TITLE AS: N. Picco & Sons Contr. Co., Inc.  
v Board of Educ. of Bronxville School  
Schools  
Notice of Claim

In action for breach of construction contract, plaintiff was excused from complying with statutory notice of claim requirement in Education Law § 3813; detailed grievance procedures of parties' contract were inconsistent with those contained in Education Law § 3813, thus indicating parties' apparent intention to waive normal applicability of section 3813.

In an action to recover damages for breach of a construction contract, the defendant appeals from an order of the Supreme Court, Westchester County (Bellantoni, J.), entered May 25, 2005, which, inter alia, denied its motion to dismiss the complaint for failure to serve a verified notice of claim.

Ordered that the order is affirmed, with costs.

Contrary to the defendant's contention, the Supreme Court properly determined that the plaintiff was excused from complying with the statutory notice of claim requirement in [Education Law § 3813](#). The detailed grievance procedures of the parties' contract were "plainly inconsistent with those contained in [\[Education Law § 3813\]](#), thus indicating the parties' apparent intention to waive the normal applicability of [section 3813](#) to proceedings such as this" (*Matter of Guilderland Cent. School Dist. [Guilderland Cent. Teachers Assn.]*, 45 AD2d 85,

86 [1974]; see *Civil Serv. Empls. Assn. v Board of Educ. of Lakeland Cent. School Dist. of Shrub Oak*, 230 AD2d 703 [1996]; cf. *Davis-Wallbridge, Inc. v City of Syracuse*, 71 NY2d 842, 843 [1988]).

The defendant's remaining contentions are either without merit (see e.g. *D.J.H. Mech. Assoc., Ltd. v Mahopac Cent. School Dist.*, 21 AD3d 521, 522 [2005]) or need not be reached in light of our determination. H. Miller, J.P., Crane, Skelos and Dillon, JJ., concur.

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NY, 2006.

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