



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
INDUSTRIAL WINDOW CORP., :
 :
 Plaintiff, :
 :
 -v- :
 :
 FEDERAL INSURANCE COMPANY, :
 :
 Defendant. :
----- x

07 Civ. 10959 (JSR)
ORDER

JED S. RAKOFF, U.S.D.J.

Plaintiff Industrial Window Corp. ("IWC") filed the above-captioned case on December 3, 2007, seeking \$254,906.96 in damages from defendant Federal Insurance Company ("Federal"). On February 1, 2008, Federal moved to dismiss the complaint, pursuant to Rule 12(b)(6) of the Fed. R. Civ. P., as barred by Alternative Dispute Resolution ("ADR") provisions contained in a contract incorporated by reference into the contract and payment bond at issue here. In the alternative, Federal requested that the Court convert its motion into one for summary judgment and grant summary judgment in its favor. The Court heard oral argument on the motion on March 7, 2008. At that time, pursuant to Fed. R. Civ. P. 12(d), the Court converted the motion to dismiss into a motion for summary judgment under Rule 56 and set a schedule by which the parties were to submit any further evidence or briefing that they desired. See transcript 3/7/08. The Court has now reviewed the additional submissions from the parties.

Based on its review of all the submissions, the Court, for reasons that will be set forth in an opinion that will issue in due course, hereby denies Federal's motion for summary judgment. The

parties are hereby directed to jointly submit to the Court, by no later than May 13, 2008, a proposed Case Management Plan that will have this case ready for trial by October 6, 2008.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
May 6, 2008