

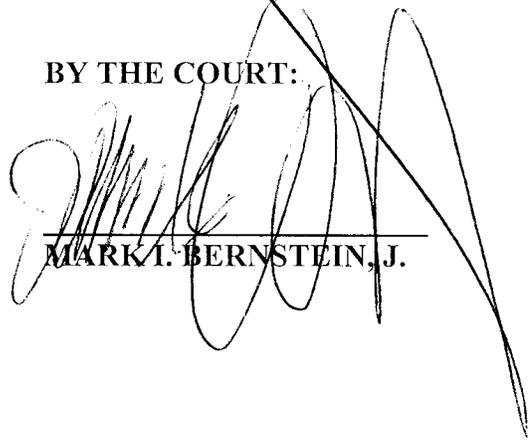
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

G&T CONVEYOR COMPANY, INC., : NOVEMBER TERM, 2009
: :
v. : NO. 03117
: :
ERNEST BOCK & SONS, INC., et al., : COMMERCE PROGRAM
: :
v. : Control No. 11050495
: :
CITY OF PHILADELPHIA, et al. :

ORDER

AND NOW, this 30th day of September, 2011, in accord with the Opinion issued simultaneously, it is **ORDERED** that plaintiff's Motion for Declaratory Judgment is **GRANTED in part** with respect to the interpretation of the relevant provisions of the Subcontract. The remainder of the Motion is **DENIED**.

BY THE COURT:



MARK T. BERNSTEIN, J.

G&T Conveyor Company, I-ORDOP



09110311700272

DOCKETED

OCT 8 2011

C. HART
CIVIL ADMINISTRATION

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

G&T CONVEYOR COMPANY, INC.,	:	NOVEMBER TERM, 2009
	:	
v.	:	NO. 03117
	:	
ERNEST BOCK & SONS, INC., et al.,	:	COMMERCE PROGRAM
	:	
v.	:	Control No. 11050495
	:	
CITY OF PHILADELPHIA, et al.	:	

OPINION

Plaintiff, G&T Conveyor Company, Inc. (“G&T”) is a sub-contractor on a construction project at the Philadelphia Airport (the “Project”). G&T entered into an agreement (the “Subcontract”) with the prime contractor, defendant Ernest Bock & Sons, Inc. (“Bock”), to install a new baggage handling system at the Airport. Bock has a separate contract with the owner of the Airport, additional defendant, City of Philadelphia (“City”).

The Project is not yet complete. It has suffered numerous delays and cost overruns, which are the subject of this litigation. G&T claims it is entitled to be paid for work it has completed. Bock and the City deny that the work is completed, deny that G&T is entitled to payment, and claim that G&T is responsible for at least some of the delays and additional costs.

G&T moved for partial summary judgment seeking a declaratory judgment from this court that G&T may cease work on the Project because it has not been timely paid. Bock and the City dispute G&T’s right to do so under the Subcontract between G&T and Bock. This disagreement is strictly a question of contract interpretation. The relevant portions of the Subcontract are the following:

5). Payment Terms: NO payments will be made to [G&T] without the receipt of a signed Purchase Order, insurance certificate and exhibits as well as a list of subcontractors and major suppliers, approved schedule of values, release of liens,

which must be reviewed and accepted by [Bock]. A monthly release of liens and claims from both the subcontractor/major suppliers must be submitted. Provided an application is received on or before the 25th of each month, [Bock] shall make prompt payment per the terms listed. [G&T] may invoice up to the end of said month provided work is completed by the end of the month. Payment by [City] to [Bock] for the work/materials invoiced by [G&T] shall be a condition precedent to [Bock's] obligation to pay [G&T]. Accordingly [G&T] agrees and understands that it shall bear the risk of non-payment by the [City] and shall be entitled to no compensation from [Bock] in the event of non-payment by the [City] for G&T's work/materials.¹

5a). G&T will provide a pencil copy of application for payment by the 20th of each month that includes progress projected to the end of the month. [Bock] will review the application for payment and notify G&T of any corrections that in its opinion need to be made to the application prior to submission to [the City's agent]. G&T will make corrections as agreed between [Bock] & G&T and [Bock] will incorporate the amended application into the [Bock] application for payment. [Bock] shall make payment to G&T within 45 days from the end of the month. If G&T has not received payment on the 45th day, G&T shall serve notice to cease work in the 46th day. Shall G&T not receive its payment from [Bock], G&T shall not be subject to the assessment of liquidated damages for days not worked due to non-payment.²

* * *

17). In the event that [the City] fails to pay [Bock] for work completed by [G&T], then [Bock] shall not be obligated to pay [G&T] until payment is received by [Bock] from [the City] and [G&T] has properly submitted invoices as set forth above.

G&T argues this language allows it to cease work if it is not paid for properly documented, approved, completed work. Bock argues G&T may not cease work for non-payment unless Bock has received payment from the City for G&T's work and Bock refuses to pass that payment on to G&T. G&T agrees that if Bock has not been paid, G&T cannot require Bock to pay. However, G&T does not read the Pay-if Paid Provision to mean that G&T must continue to work on the Project without pay, or, as G&T puts it, to "finance the construction."

The Pay If Paid Provision and the Cease Work Provision do not contradict each other; they are totally consistent with one another. These provisions make clear that Bock is not in

¹ Paragraphs 5 and 17 set forth a "Pay If Paid Provision."

² This paragraph sets forth a "Cease Work Provision."

breach of the Subcontract if the City fails to pay Bock and Bock fails to pay G&T. However, G&T is not required to work without being paid. If the City does not pay Bock and Bock does not pay G&T for properly documented, approved, completed work within the required 45 days , G&T may stop work on the Project without suffering any penalty for delay. In other words, G&T's interpretation of these provisions is correct, and summary judgment is granted in its favor on this issue of law.

G&T also asks this court to declare that it may cease work based on nonpayment of portions of three invoices submitted in November, 2010, December, 2010, and January, 2011.³ Bock and the City claim they have paid G&T all that is due on these invoices and any remaining amounts billed were not properly documented, completed, or approved. G&T argues, based on the affidavit of its own Project Manager, that the amount it claims is still due is for work that was properly documented, completed, and approved.

Under the Nanty-Glo rule, this court cannot grant summary judgment in G&T's favor based on the contested testimony of its own witness.⁴ There is a disputed issue of material fact as to whether any additional amounts are actually due from Bock to G&T on the invoices that are the subject of G&T's Motion for Summary Judgment. Therefore, the court must deny G&T's request for a declaration that it may cease work based on the non-payment of such invoices.

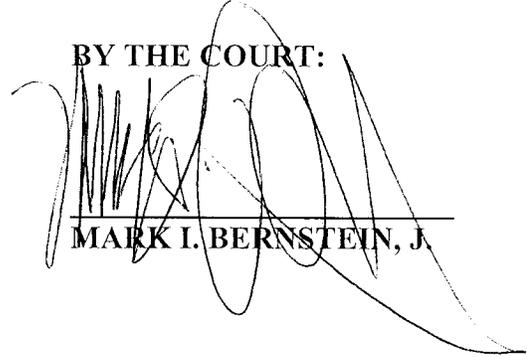
³ It appears that some payments were made by Bock with respect to these invoices after G&T filed its Motion for Summary Judgment.

⁴ See Penn Center House, Inc. v. Hoffman, 553 A.2d 900, 903 (Pa. 1989) (“a court may not summarily enter a judgment where the evidence depends upon oral testimony.”)

CONCLUSION

For all the foregoing reasons, G&T's Motion for Partial Summary Judgment is granted in part and denied in part.

BY THE COURT:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and vertical strokes, positioned above a horizontal line.

MARK I. BERNSTEIN, J.