

On July 22, 2011, Jack Wills contracted with Core States Construction to provide construction services associated with 1617 Walnut Street, Philadelphia, PA (“the Contract”). Subsequently, Core States Construction entered into an agreement (“Subcontractor Agreement”) with Liberty Integrated Solutions (“Liberty Integrated”) dated August 11, 2011. Based on this Subcontractor Agreement, Liberty Integrated agreed to perform electrical work on the project at 1617 Walnut Street including floor boxes, permits, and voice and data wiring. On or about October 27, 2011, Liberty Integrated filed a complaint

against both Jack Wills and Core States Construction for non-payment of services provided at 1617 Walnut Street. On or about December 12, 2011, Core States Construction filed an Answer to the Complaint and further filed Crossclaims against Jack Wills. Jack Wills then filed Preliminary Objections in response, seeking a stay pending arbitration.

Jack Wills correctly states that the Contract with Core States Construction contains an arbitration clause. However, the Subcontractor Agreement between Liberty Integrated and Core States Construction does not contain an arbitration clause.

Here, the underlying claims are based on a “pay-when-paid” provision contained in the Subcontractor Agreement between Liberty Integrated and Core States Construction. According to this provision, until Core States Construction receives payment from Jack Wills, it is under no obligation to pay Liberty Integrated.¹ For this reason, Core States Construction filed various crossclaims against Jack Wills in order to assert a defense against Liberty Integrated’s claims.

Legal Analysis

Arbitration is proper only when the dispute falls within a contract’s arbitration clause. “When one party to an agreement seeks to prevent another from proceeding to arbitration, judicial inquiry is limited to determining (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration [clause].”

Highmark Inc., v. Hosp. Serv. Ass'n of Ne. Pa., 785 A.2d 93, 98 (Pa. Super. Ct. 2001). This Court recognizes that the language of the arbitration clause in the Contract between Core States Construction and Jack Wills provides that all claims and disputes arising out of or relating to the Contract will be arbitrated: “For any claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows: Arbitration pursuant

¹ 01/19/12 Core States’ Answer to Jack Wills Preliminary Objections, Ex. B

to Section 15.4 of AIA Document A201-2007.”² This Court also recognizes that in Pennsylvania, the laws favor settlement of disputes through arbitration as a means of promoting efficient resolution of claims. Flightways Corp. v. Keystone Helicopter Corp., 331 A.2d 184, 185 (Pa. 1975). If this dispute was merely between Core States Construction and Jack Wills, arbitration certainly would be proper. However, the plaintiff Liberty Integrated is not a party to the Contract, and therefore should not be bound by the arbitration clause. This should be so whether it is Liberty Integrated’s direct claims against Jack Wills or Core States Construction’s crossclaims against Jack Wills.

A trial court possesses broad discretion to grant or deny a stay. In re Penn-Delco Sch. Dist., 903 A.2d 600, 606-07 (Pa. Commw. Ct. 2006). Several considerations inform this Court’s determination that denying the stay for arbitration is appropriate. First, “arbitration cannot be compelled in the absence of an express agreement to arbitrate.” Gaffer Ins. Co. v. Discover Reinsurance Co., 936 A.2d 1109, 1113 (Pa. Super. Ct. 2007). The dispute in question involves a Plaintiff who is not party to the agreement Jack Wills’ motion arises from. See Sch. Dist. V. Livingston-Rosenwinkel, 690 A.2d 1321, 1323 (Pa. Commw. Ct. 1997) (the court denied an additional defendant’s preliminary objection to compel arbitration since plaintiff has a right to choose the forum and was not a party to the arbitration agreement).

Second, as Plaintiff, Liberty Integrated selected this forum to resolve its disputes. Pursuant to Pa. R. Civ. P. 1031.1, Core States Construction filed crossclaims against Jack Wills based on a separate contract. The rule itself was “formulated for the express purpose of bringing together into a single law suit causes of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the plaintiff’s cause of action is based.” Rettger v. UPMC Shadyside, 991 A.2d 915, 928 (Pa. Super. Ct. 2010). Because Rule 1031.1 does not include an exception for arbitration, Jack Wills cannot compel arbitration in place of a crossclaim here. See Livingston-Rosenwinkel, 690 A.2d at 1323 (the court held an additional defendant cannot compel arbitration in place of joinder).

² 01/19/12 Core States’ Answer to Jack Wills Preliminary Objections, Ex. A

Third, the objectives of alternative dispute resolution are to promote the swift and orderly resolutions of claims. “In disputes involving identical facts, we have an interest in obtaining consistent results and avoiding an unnecessary waste of resources.” Smay v. E.R. Stuebner, Inc., 864 A.2d 1266, 1272 (Pa. Super. Ct. 2004). See, Pa. R. Civ. P. 213(a) (“In actions pending in a county which involve a common question of law or fact or which arise from the same transaction or occurrence, the court on its own motion or on the motion of any party may ... make orders that avoid unnecessary cost or delay.”). Requiring Core States Construction to arbitrate its claims against Jack Wills would force Core States Construction to litigate the same liability and damages issues in two separate forums, before two different fact-finders. The crux of Liberty Integrated’s claims are based on Core States Construction’s non-payment for work performed according to their Subcontractor Agreement. Because Core States Construction’s primary defense is based on a counterclaim asserted against Jack Wills, keeping the entire case within this Court’s jurisdiction would promote judicial efficiency.

Conclusion

In order to promote judicial efficiency and the speedy resolution of this law suit, Jack Wills’ appeal of this Court’s March 5th Order denying the motion to stay arbitration is denied.

BY THE COURT:

Date: _____

ALBERT JOHN SNITE, JR., J.