

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

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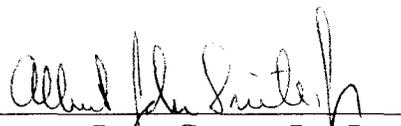
SFL CONSTRUCTION, INC.	:	March Term, 2010
	:	
<i>Plaintiff</i>	:	Case No. 05347
	:	
v.	:	Commerce Program
	:	
TOSA CONSTRUCTION, INC., N. PAONE	:	
CONSTRUCTION, INC., NICOLA PAONE, ROSEANN	:	
PAONE and D.R. HORTON, INC.	:	
	:	
<i>Defendants</i>	:	

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**ORDER**

AND NOW, this 7<sup>th</sup> day of January, 2013, upon consideration of the memorandum of law of Plaintiff SFL Construction, Inc. which demands trial by jury, and the memorandum of law in opposition of defendants Tosa Construction, Inc., N. Paone Construction, Inc., Nicola Paone and Roseann Paone, it is **ORDERED** that the instant action shall proceed as a **non-jury trial**.<sup>1</sup>

**By The Court,**

  
**ALBERT JOHN SNITE, JR., J.**

Sfl Construction, Inc. Vs Tosa Construction.-ORDOP



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<sup>1</sup> The respective memoranda of law of Plaintiff and Defendants were improperly filed under the caption "Proposed Findings-of-Fact and Conclusions-of-Law."

## MEMORANDUM OPINION

Plaintiff SFL Construction, Inc. (“Plaintiff,”) filed an amended complaint against defendants Tosa Construction, Inc., N. Paone Construction, Inc., Nicola Paone and Roseann Paone (the “Tosa Defendants.”) The amended complaint asserts against the Tosa Defendants the claims of breach-of-contract, promissory estoppel, violation of the Contractor-Subcontractor Payment Act and unjust enrichment. The amended complaint also attempts to pierce the corporate veil as to N. Paone Construction, Inc., Nicola Paone and Roseann Paone.

Plaintiff demands a jury trial and filed in support thereof a memorandum of law improperly captioned “Proposed Findings-of-Fact and Conclusions-of-Law.”

Defendants oppose the demand for a jury trial in their memorandum of law which is also improperly captioned “Proposed Findings-of-Fact and Conclusions-of-Law.”

Defendants argue that Plaintiff waived its right to a jury trial under the terms of a sub-contracting agreement (the “Agreement,”) entered into between Plaintiff/subcontractor, and Tosa Construction, Inc.<sup>2</sup> By contrast, Plaintiff asserts that ambiguities in the Agreement negate waiver of the right to a jury trial.<sup>3</sup> Some of the alleged ambiguities contained in the Agreement relate, *inter alia*, to whether any legal proceeding arising out of the Agreement is to be decided under the laws of Pennsylvania or New Jersey.<sup>4</sup>

“The task of interpreting [a] contract is generally performed by a court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties as manifested by the language of the written instrument. Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement. Where, however, the language of the contract is clear and unambiguous, a court is required to give

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<sup>2</sup> See Agreement dated 30 March 2006, Exhibit A. to Defendant’s memorandum of law.

<sup>3</sup> See Plaintiff’s Memorandum of Law in Support of Jury Trial, p. 3.

<sup>4</sup> See Agreement dated 30 March 2006, Exhibit A at ¶ 16 to Defendant’s memorandum of law.

effect to that language.”<sup>5</sup>

In this case, the Agreement between defendant Tosa Construction, Inc. and Plaintiff, SFL Construction, Inc., clearly and unambiguously states that “the parties hereby waive trial by jury in any legal proceeding brought by either of them against the other with respect to any matters arising out of or in any way connected with this agreement.”<sup>6</sup> This language leaves no doubt: under the Agreement, Plaintiff and defendant Tosa Construction, Inc. clearly and unambiguously waived their right to a jury trial with respect to any matters arising out of the Agreement. Accordingly, Plaintiff’s demand for a jury trial is denied as to defendant Tosa Construction, Inc.

In its memorandum of law, Plaintiff argues that it is entitled to a jury trial as to N. Paone Construction, Inc., Nicola Paone and Roseann Paone, because such defendants are non-parties to the Agreement. According to Plaintiff, since such defendants are non-parties to the Agreement, the provision thereof waiving the right of a jury trial is inapplicable. Opposing this argument, the Tosa Defendants argue that the claims against N. Paone Construction, Inc., Nicola Paone and Roseann Paone “are based upon an alter ego theory of piercing the corporate veil, and therefore are secondary and derivative in nature to the contract claims against Tosa [Construction, Inc.]”<sup>7</sup> Thus, the Tosa Defendants conclude that Plaintiff has no right whatsoever to a jury trial in this action.

Under Pennsylvania law, piercing the corporate veil is an equitable remedy.<sup>8</sup>

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<sup>5</sup> Madison Constr. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 606; 735 A.2d 100, 106 (Pa. 1999).

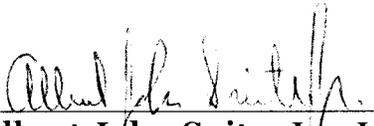
<sup>6</sup> See Agreement dated 30 March 2006, Exhibit A at ¶ 16 to Defendants’ memorandum of law.

<sup>7</sup> Defendants’ memorandum of law, p. 4.

<sup>8</sup> “Shareholders, officers and directors are not held liable for the corporation’s breach of a contract, absent the successful assertion of the **equitable** doctrine of piercing the corporate veil.” Fletcher-Harlee Corp. v. Szymanski, 2007 Pa. Super 310, P21 (Pa. Super. Ct. 2007) (emphasis supplied).

Piercing the corporate veil is an equitable action also under the laws of New Jersey.<sup>9</sup> Finally, under Pennsylvania or New Jersey law, “the right to a jury trial attaches in legal, but not equitable actions.”<sup>10</sup> In this case, the amended complaint seeks to pierce the corporate veil as to defendants N. Paone Construction, Nicola Paone and Roseann Paone.<sup>11</sup> Since piercing the corporate veil is an equitable action, there is no right to a jury trial regardless of whether the Agreement is ambiguous with respect to the choice-of-law provision therein. Accordingly, Plaintiff’s demand for a jury trial is denied in its entirety.

**By The Court,**

  
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**Albert John Snite, Jr., J.**

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<sup>9</sup> “Veil piercing is an **equitable remedy** whereby the protections of corporate formation are lost” and the parent corporation may be found liable for the actions of the subsidiary. In that regard, piercing the corporate veil is not technically a mechanism for imposing legal liability, but for remedying the fundamental unfairness [that] will result from a failure to disregard the corporate form.” Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App.Div. 2006).

<sup>10</sup> Wood v. New Jersey Mfrs. Ins. Co., 206 N.J. 562, 574 (N.J. 2011); *See also* Calabrese v. Collier Township Municipal Authority, 432 Pa. 360, 362; 248 A.2d 236, 237 (Pa. 1968) (in equity actions, there is no right to trial by jury); Advanced Telephone Systems, Inc. v. Com—Net Professional Communications, 2004 Pa. Super. 100; 846 A.2d 1264 (Pa. Super. 2004) (no right to a jury trial in actions seeking to pierce the corporate veil).

<sup>11</sup> Amended Complaint, ¶¶ 6-9.