

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

HOLMES SCHOOL LIMITED PARTNERSHIP	:	
and WPP, L.P.	:	June Term, 2002
	:	
Plaintiffs,	:	No. 03512
	:	
v.	:	
	:	Commerce Program
THE DELTA ORGANIZATION, INC.	:	
	:	Control No. 091451
Defendant.	:	

ORDER AND MEMORANDUM

AND NOW, this 19th day of November 2002, upon consideration of the Petition for Interpleader of The Delta Organization, any responses thereto, and in accordance with the contemporaneous Memorandum Opinion, it is hereby **ORDERED** and **DECREED** that said Petition is **DENIED** in its entirety.

BY THE COURT:

GENE D. COHEN, J.

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	:	Control No. 091451
Defendant.	:	

MEMORANDUM OPINION

GENE D. COHEN, J.

Before the Court is the Petition for Interpleader of Defendant The Delta Organization, Inc. (“Delta”). For the reasons fully set forth below, Delta’s Petition is DENIED.

BACKGROUND

Between March 22 and June 8, 2001, Delta and plaintiffs Holmes School LP and WWP, LP (collectively “Holmes”) entered into three contracts in connection with certain construction projects at Holmes Middle School (the “Project”). Def. Pet. ¶¶ 5-7. Thereafter, Delta entered into contracts with various subcontractors and suppliers to perform the work necessary to complete the Project. *Id.* at ¶ 8. Since that time, a dispute has arisen between the parties regarding the Project and certain contractual obligations relating thereto. As a result, Holmes filed a breach of contract action against Delta on or about June 26, 2002. *Id.* at ¶ 11.

Delta has filed the instant Petition seeking to interplead “...in excess of forty...

subcontractors and suppliers...[who] performed work on the Project.” Id. at ¶ 13. Delta contends that the forgoing subcontractors and suppliers are “claimants” who “have made or otherwise are expected to make demand upon Delta for payment of funds currently withheld by Holmes.” Id. at ¶ 14. Holmes contests the instant Petition on the grounds that the subcontractors and suppliers at issue are not “claimants” but rather are parties to “...numerous separate contracts [to] which...Delta has made itself independently liable.” Pl. Resp. ¶ 13.

DISCUSSION

Interpleader is the procedural mechanism through which “...adverse claimants against money, property or debt held by another may be required to litigate their claims in one proceeding.” Lewandowski v. Life Ins. Co. of North America, 415 Pa. Super. 215, 608 A.2d 1087 (1992); Pa.R.C.P. 2301, *et seq.* For purposes of interpleader, an “adverse claimant” is not merely one who makes a claim against the defendant, rather it is one whose claim is inconsistent with (or adverse to) the claim made against the defendant by the plaintiff in a specific action. Genro Inc. v. Int’l Chemical and Nuclear Corp., 224 Pa. Super. 60, 62 n.1, 302 A.2d 466, 468 n.1 (1973). The purpose of interpleader is to avoid exposing the defendant to vexation of multiple suits or multiple liability upon the same claim.” Lewandowski, 415 Pa. Super. at 218, 608 A.2d at 1088-9.

The grant or refusal of interpleader is an equitable consideration resting within the sound discretion of the trial court. U.S. National Bank in Johnstown v. Robel Construction, Inc., 333 Pa. Super. 605, 482 A.2d 1037 (1984). Interpleader will be permitted where a defendant is “besieged by several claims, only one of which can be meritorious.” Drobnak v. McKool, 28 Pa. D. & C.4th 553, 556 (1993). Conversely, interpleader will be denied where the defendant has

incurred independent liability to any of the claimants at issue. Id. “If the facts are such that the defendant will be liable to each claimant, and the recovery by one claimant will not preclude recovery by the other claimant, no interpleader can be allowed.” Wilson v. McCarthy, 1 Pa. D. & C.3d 579, 586 (1977).

As previously stated, one of crucial elements necessary for interpleader is the risk of inconsistent liability to the defendant. Pa.R.C.P. 2303. This Court finds that Delta's has failed to satisfy this requirement. While it is true that any claims which the subcontractors and suppliers may have against Delta are multiple, they are not inconsistent with each other or with Holmes' claim against Delta. “To be inconsistent, the claims asserted against defendant must be mutually exclusive such that recovery by one precludes recovery by any and all other claimants and potential claimants.” Drobnak, 28 Pa. D. & C.4th at 558. Here, if Holmes prevails on its breach of contract claim, this will not preclude future recovery against Delta by the suppliers and subcontractors. The fact that Delta may be liable to more than one party not presently before this Court does not establish inconsistent liability or the potential therefor. Instead, any multiple liability that Delta may face arises out of the fact that it incurred independent liability to each of the potential claimants when it entered into separate contracts with them. Based on the foregoing, Delta is not in any danger of potential inconsistent liabilities which would require this Court to grant its Petition for Interpleader.

CONCLUSION

Based on the foregoing, Delta's Petition for Interpleader is denied. This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

GENE D. COHEN, J.

Dated: November 19, 2002