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

LORENZON BROTHERS CO.,	:	November Term 2015
Plaintiff,	:	
v.	:	No. 252
SCHNOLL PAINTING CORP.,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 1701012101
	:	
	:	2355 EDA 2017

Lorenzon Brothers Co. Vs Schnoll Painting Co-OPFLD

Djerassi, J.

15110025200066

October 30, 2017

OPINION

This is an appeal by defendant Schnoll Painting Corp ("Schnoll") from an Order dated June 28, 2017, granting plaintiff Lorenzon Brothers Co.'s ("Lorenzon") partial summary judgment. In a separate case, Wayne Bowker, a Schnoll employee, had sued Lorenzon for personal injury damages that occurred when Schnoll was subcontracting for Lorenzon at a jobsite at the University of Pennsylvania. [1] The instant case involves Lorenzon's present claim for contribution and contractual indemnification for damages recovered by Mr. Bowker and his wife when they settled the underlying personal injury case with Lorenzon.

Preliminarily, this appeal may be quashed because our Order is arguably not final as a partial summary judgment.

Notwithstanding, we address the merits in the interest of judicial economy and explain why our June 28, 2017 order should be affirmed. This approach may be more efficient under the circumstances as our Order was in fact dispositive of the chief issue in this case---whether a

[1] The underlying case is captioned *Bowker v. Lorenzon Brothers Co.*, May Term, 2013 No. 258 (Philadelphia County).

Subcontract Agreement between Lorenzon and Schnoll was in force at the time Mr. Bowker was injured.

STATEMENT OF FACTS

General contractor Lorenzon and its subcontractor Schnoll entered into a Subcontract Agreement for interior painting work at College Hall, University of Pennsylvania. The Subcontract Agreement was dated May 30, 2011 and Schnoll's painting work began in June 2011. The agreement document was executed on October 13, 2011.

On August 26, 2011, Mr. Bowker was injured while working as a Schnoll employee on the College Hall painting job. He fell from a scaffold and this happened during course and scope of his employment. Mr. Bowker and his wife filed the underlying lawsuit against Lorenzon alleging negligence and strict liability for failing to provide a safe work place.

As defendant in that case, Lorenzon asserted defenses including indemnification under its Subcontract Agreement with Schnoll. By doing so, Lorenzon claimed status as an additional insured under Schnoll's own liability insurance coverage. On March 17, 2014, Lorenzon filed a joinder complaint in the *Bowker* case and formally joined Schnoll as additional defendant there. Lorenzon asserted a contractual indemnification claim against Schnoll. On September 16, 2015, Liberty Mutual, Schnoll's insurer, advised Lorenzon that there was no additional insured coverage for Lorenzon under Schnoll's policy on grounds that the subcontract between Schnoll and Lorenzon was signed after the actual date of the loss. Then, on November 13, 2015, Lorenzon, Mr. Bowker and his wife settled the underlying case.

The Subcontract Agreement between Lorenzon and Schnoll contains an indemnification provision in pertinent part:

> The Subcontractor [Schnoll] shall indemnify, defend, and hold harmless the Contractor [Lorenzon], the Contractor's surety, if any, the Owner and the

Architect from and against any and all costs, losses, expenses, liabilities, damages, settlements, claims for damages (including attorney's fees and costs for defending any action) suffered, incurred or arising from:

D. Injury to persons (including death) or damage to or destruction of property, including property of the Owner, arising or resulting from the Work provided for or performed under this Subcontract, whether from any actual or alleged act, omission, negligence of the Subcontractor, its subcontractors, or anyone employed by them or for whose acts they may be liable, regardless of whether any such injury, damage or destruction is caused, in part, by a party indemnified hereunder.

The Subcontract Agreement also includes an insurance related provision that states in relevant part:

Subcontractor agrees to procure before commencing Work and to maintain at its expense until final acceptance of Work, all the coverages set forth on the Insurance Rider which is attached hereto and the terms of which Rider are made a part hereof. Before commencing the Work, Subcontractor shall furnish Contractor the certificate or certificates of insurance required under the Insurance Rider.

In the event an Insurance Rider is not attached to this Subcontract, then Subcontractor agrees to procure before commencing the Work and to maintain at its expense until final acceptance of the Work, **the coverages listed below in companies and with limits acceptable to Contractor and to Owner.**

B. Comprehensive general liability insurance (including explosion, collapse and underground hazards, broad form contractual liability and products and competed operations), comprehensive business automobile liability insurance, property damage insurance and umbrella liability insurance. These Insurance coverages must identify Contractor and Owner as additional insureds on a primary and noncontributory basis on their General Liability Policy.

The Subcontract Agreement further includes a performance of work provision which states as follows:

If Subcontractor has commenced performance of the Work hereunder prior to the execution of this Subcontract, it is specifically understood that all such work shall be included in the Work to be performed under this Subcontract, and shall be in conformity with and subject to the terms and conditions hereunder.

On November 2, 2015, Lorenzon filed the instant matter asserting breach of contract against Schnoll for failing to comply with these indemnification and insurance provisions of the Subcontract Agreement. Lorenzon seeks contribution and indemnity from Schnoll for defense costs and settlement monies paid to Mr. Bowker and his wife by settlement. On January 17, 2017, Lorenzon filed a self-styled motion for partial summary judgment. On February 17, 2017, Schnoll responded. On June 28, 2017, we entered our Order in favor of Lorenzon and declared that the Settlement Agreement governs this indemnity dispute. On July 21, 2017, Schnoll filed this appeal.

DISCUSSION

I. The appeal can be quashed if the Order appealed from is a final order, but in the event our judgment is dispositive, the appellate court should take jurisdiction and affirm before remanding.

Only final orders are appealable. Final orders are defined as orders disposing of all claims and all parties.[2] Rule 341(b) of the Rules of Appellate Procedure defines a final order as "any order that disposes of all claims and of all parties or is entered as a final order pursuant to subdivision (c) of this rule." [3] A final order is one which usually ends litigation, or alternatively, disposes of the entire case.[4] The Order dated June 28, 2017 granting Lorenzon's motion for partial summary judgment leaves open damage related issues, potentially including the

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[2] *Spuglio v. Cugini*, 818 A.2d 1286, 1287 (Pa.Super. 2003), citing *American Independent Ins. Co. v. E.S. Ex. Rel. Crespo,* 809 A.2d 388 (Pa.Super.2002); *see* Pa.R.A.P. 341(b)(1) (a final order is any order that disposes of all claims and of all parties).

[3] Pa. R.A.P. 341(b), (c).

[4] *Pennsylvania Ass'n of Rural and Small Schools v. Casey,* 531 Pa. 439, 442, 613 A.2d 1198, 1199 (1992).

reasonableness of Lorenzon's personal injury settlement with the Bowkers. Nevertheless, our Order may indeed be characterized as dispositive because the Order declares the Subcontract Agreement and its indemnity and insurance provisions were in force at the time of Wayne Bowker's accident.

We therefore address the merits in case the appellate court takes jurisdiction before remanding to resolve remaining damage related issues.

II. This court's order dated June 28, 2017 should be affirmed.

The question posed by Lorenzon in its motion for partial summary judgment is whether the Subcontract Agreement between the parties was in effect on the date of Wayne Bowker's accident on August 26, 2011. On review, and particularly in light of the Subcontract Agreement's performance of work provision, we find the Subcontract Agreement was in effect on the date of Mr. Bowker's accident. As quoted earlier, the performance of work provision provides:

> *"If Subcontractor has commenced performance of the Work hereunder prior to the execution of this Subcontract, it is specifically understood that all such work shall be included in the Work to be performed under this Subcontract, and shall be in conformity with and subject to the terms and conditions hereunder."*

The undisputed facts are as follows: (1) the Subcontract Agreement containing the performance of work provision is dated May 30, 2011; (2) Schnoll commenced work on the Project in June 2011; (3) Mr. Bowker was injured on August 26, 2011 while performing work under the project and (4) Schnoll executed the Subcontract Agreement on October 13, 2011. While the Subcontract Agreement was not executed until October, the performance of work provision is clear: the Subcontract Agreement governs.

Schnoll relies in its response to the motion for partial summary judgment on the absence of a signature on the Subcontract Agreement until after Wayne Bowker's fall. Schnoll claims this

creates a genuine issue of fact whether the Subcontract Agreement was valid and binding on the date he was injured. But Schnoll's reliance on the signature issue is misplaced because a contract is created when there is mutual assent to terms by parties with the capacity to contract. This is so if the mutual assent includes all elements of a valid contract.[5] "If the parties agree upon essential terms and intend them to be binding, a contract is formed even though they intend to adopt a formal document with additional terms at a later date." [6] As a general rule, signatures are not required unless such signing is expressly required by law or by the intent of the parties. [7]

Here, it is clear from the inclusion of the performance of work provision in the Subcontract Agreement that the parties did not intend signatures to be a requirement for forming a valid contract.[8] The performance of work provision gave Schnoll the license to begin its painting at College Hall before the parties formally signed a written agreement. Had they signed first, perhaps years of litigation could have been avoided because without a doubt, Schnoll began its paint job with terms of a contract mutually agreed. These included quality of work, timeline to complete the work, estimate for the costs of materials and labor and form of payment.

In summary, the Subcontract Agreement was a valid and binding agreement at the time Wayne Bowker was injured.

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[5] *Shovel Transfer and Storage, Inc. v. Pennsylvania Liquor Control Bd.*, 559 Pa. 56, 62-63, 739 A.2d 133, 136, (1999) citing *Taylor v. Stanley Co. of America,* 305 Pa. 546, 553, 158 A. 157 (1932).

[6] *Taylor v. Stanley Co. of America.* citing *Johnston v. Johnston,* 499 A.2d 1074, 1076 (Pa. Super. 1985); accord *Field v. Golden Triangle Broadcasting, Inc.,* 451 Pa. 410, 305 A.2d 689, 693 (1973).

[7] *L.B. Foster Co. v. Tri–W Construction Co.,* 409 Pa. 318, 186 A.2d 18, 19 (1962).

[8] Schnoll's reliance *on Pendrak v. Keystone Shipping Center,* 446 A.2d 912 (Pa. Super. 1982) is mistaken because the *Pendrak* court was faced with a factual dispute over the relevant "date" in a Workmen's Compensation dispute under Section 303(b) of the Act.

CONCLUSION

If the Court accepts jurisdiction over this appeal, our Order dated June 28, 2017 declaring the Settlement Agreement was in force when Wayne Bowker was injured should respectfully be affirmed. The Court should then remand for further proceedings to either try or resolve this case under judgment already declared.

BY THE COURT

RAMY I. DJERASSI, J.