

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

LARRY WOELK,	:	
Plaintiff	:	FEBRUARY TERM, 2013
	:	
	:	NO. 2037
vs.	:	
	:	DOCKETED
JPC GROUP INC., GC JPC GROUP,	:	
GC JPC GROUP INC., and	:	SEP 26 2013
QUINCY CONTRACTORS INC.,	:	
Defendants	:	F. CLARK
	:	DAY FORWARD
vs.	:	
	:	
CORNWELLS CONSTRUCTION CO.,	:	
Additional Defendant	:	

ORDER

And Now, this ^{7th}26th day of September, 2013, after consideration of the Preliminary Objections of Additional Defendant, Cornwells Construction Co. to the Joinder Complaint of Defendant, JPC Group, Inc., and the Response thereto, and for the reasons set forth in the Court's Memorandum filed this date, it is hereby **ORDERED** that said Preliminary Objections are **OVERRULED**. The Defendant's right to pursue indemnification is contingent on the evidence obtained and the outcome of the underlying claims. Additional Defendant shall file an Answer to the Joinder Complaint within then (20) days from the date of this Order.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

Woelk Vs Jpc Group Inc.-ORDMM



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LARRY WOELK,	:	
Plaintiff	:	FEBRUARY TERM, 2013
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	:	NO. 2037
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JPC GROUP INC., GC JPC GROUP,	:	
GC JPC GROUP INC., and	:	
QUINCY CONTRACTORS INC.,	:	
Defendants	:	
	:	
vs.	:	
	:	
CORNWELLS CONSTRUCTION CO.,	:	
Additional Defendant	:	

MEMORANDUM IN SUPPORT OF ORDER OVERRULING PRELIMINARY
OBJECTIONS OF THE ADDITIONAL DEFENDANT

MASSIAH-JACKSON, J.

September 26th, 2013

A. FACTUAL BACKGROUND

On May 25, 2011, Larry Woelk was working on a construction project on State Road in Philadelphia, when he fell through scaffolding. Mr. Woelk, an employee of Cornwells Construction Co., suffered serious and permanent injuries. Mr. Woelk initiated this civil action for negligence against JCP Group, Inc., the general contractor at the work site.

Defendant-JPC filed a Joinder Complaint against Mr. Woelk's employer, Cornwells, claiming that the Subcontract Agreement they entered into obligates Cornwells to indemnify and hold JPC harmless from Plaintiff-Woelk's claims. Additional Defendant-Cornwells has filed Preliminary Objections to Defendant's Joinder Complaint based on its assertion that Cornwells is immune from liability per the Workers' Compensation Act, 77 P.S. §481(a). Defendant-JPC disagrees and relies on the waiver provision of 77 P.S. §481(b) of the Act. JPC asserts that "Clause 19.1 of the subcontract satisfies the waiver requirements of Section 301(b) of Pennsylvania Workers' Compensation Act."

This Court concludes that the Subcontract Agreement does specifically use language that Cornwells, as the employer, agreed to indemnify JPC from liability for acts of JPC's negligence which resulted in harm to Mr. Woelk, Cornwell's employee.

JPC's right to pursue an indemnification recovery is premature for two reasons. First, because Plaintiff-Woelk's claims against Defendant -JPC are still pending. Second, because Cornwells and JPC agreed that Cornwells would not be responsible for indemnity if the Contractor-JPC had been given written notice of the unsafe condition prior to any accident.

Accordingly, JPC's right to pursue indemnification is contingent on the evidence obtained and the outcome of the underlying claims.

B. LEGAL DISCUSSION

The Workers' Compensation Act, 77 P.S. §481 states in pertinent part:

“(a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.

(b) In the event injury or death to an employe is caused by a third party, then such employe, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to receive damages by reason thereof, may bring their action at law against such third party, but the employer, his insurance carrier, their servants and agents, employes, representatives acting on their behalf or at their request shall not be liable to a third party for damages, contribution, or indemnity in any action at law, or otherwise, unless liability for such damages, contributions or indemnity shall be expressly provided for in a written contract entered into by the party alleged to be liable prior to the date of the occurrence which gave rise to the action.”

On May 26, 2010, the Defendant and the Additional Defendant executed the Subcontract, as follows:

Cornwells Construction Co. – Subcontractor
JPC Group, Inc. – Contractor

“Article 19. Indemnification

19.1 The Subcontractor agrees to indemnify and save the Contractor, Owner and the architect harmless from and defend at its own expense any and all claims, suits,

losses, damages or expenses in any manner connected with the work performed by or for the Subcontractor under this agreement or caused or occasioned in whole or in part by reason of the presence of the person or property of the Subcontractor, its employees, agents or suppliers, **whether or not such claims or suits shall arise out of the sole negligence of the Contractor.**

19.2 The Subcontractor shall indemnify and save the Contractor, Owner and architect, harmless from any and all claims of the employees of the Subcontractor, its vendors or its agents when such claims shall have been incurred, or alleged to have incurred from an unsafe place to work or such similar type of complaint unless the Contractor had been given written notice of the unsafe conditions prior to any accident.

19.3 The Subcontractor shall pay all the expenses and costs of attorney's fees incurred by the Contractor, Owner or architect in the enforcement of this agreement, of any bond furnished in connection herewith, or for the defense of any claim as defined herein."

In Bester v. Essex Crane Rental, 619 A.2d 304 (Pa. Superior Ct. 1993), the Superior Court made clear that an indemnification clause must "contain plain language which would avoid the employer's protection from double responsibility which is afforded by the Workers' Compensation Act." 619 A.2d at 308:

"We apply today the requirement in the law that in order for an employer to be held liable in indemnification for injuries to his own employees caused by the negligence of the indemnitee there must be an express provision for this contingency in the indemnification clause."

In this case, the language is clear that Cornwells did expressly agree to be held liable for injuries to Mr. Woelk caused by the negligence of JPC . . . whether or not the suit arises out of the sole negligence of JPC. Further, Cornwells agreed to indemnify JPC for claims of its

own employees when, as here, they are based on allegations of an unsafe work site. See also, Integrated Project Services v. HMS Interiors, Inc., 931 A.2d 724 (Pa. Superior Ct. 2007) reiterating the requirement for specificity.

Finally, this Court recognizes that before there has been actual payment of damages a claim for indemnity is premature. See generally, Kelly v. Thackray Crane Rental, Inc., 874 A.2d 649 (Pa. Superior Ct. 2005), affirming grant of summary judgment since all necessary facts of indemnity determination had not been set forth, “because Kelly’s claims against Driscoll were still pending”; McClure v. Deerland Corporation., 585 A.2d 19 (Pa. Superior Ct. 1991), claims for indemnification arise only when the party seeking indemnity has made payment on the underlying claim; Beary v. Container General Corp., 568 A.2d 190 (Pa. Superior Ct. 1989), the party seeking indemnification must pay the claim or verdict damages before obtaining any rights to pursue an indemnification recovery; Schindler Equipment Company v. Raymond Company, 418 A.2d 533 (Pa. Superior Ct. 1980), an action for indemnification before payment of damages is premature.

C. CONCLUSION

For all of the reasons set forth above, the Preliminary Objections of the Additional Defendant Cornwells Construction Co. are Overruled.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.