

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

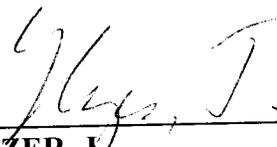
MANDS CONSTRUCTION COMPANY, : OCTOBER TERM, 2012  
: :  
Plaintiff, : NO. 01129  
: :  
v. : COMMERCE PROGRAM  
: :  
DOMUS , INC., and PHILADELPHIA : Control Nos. 13031939, 13032512  
REDEVELOPMENT AUTHORITY : :  
Defendants. :

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**ORDER**

**AND NOW**, this 22<sup>nd</sup> day of April, 2013, upon consideration of defendant Domus, Inc.'s Preliminary Objections and Petition to Compel Arbitration, the responses thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that the Preliminary Objections are **OVERRULED** and the Petition to Compel Arbitration is **DENIED**.

**BY THE COURT:**

  
\_\_\_\_\_  
GLAZER, J.

Mands Construction Comp-ORDOP  
  
12100112900054

**DOCKETED**  
APR 25 2013  
C. HART  
CIVIL ADMINISTRATION

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**DOCKETED**  
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**OPINION**

Plaintiff, Mands Construction Company (“Mands”) was a demolition subcontractor on an affordable housing construction project (the “Project”). Defendant Domus, Inc. (“Domus”) was the general contractor on the Project, and defendant Philadelphia Redevelopment Authority (“RDA”) was the conduit for federal funds to the Project. Based on allegations made by terminated employees of Mands, the RDA determined that Mands had violated the federal Davis Bacon Act (the “Act”)<sup>1</sup> and, as a result, Domus terminated its subcontract with Mands.

Mands filed this action against Domus, alleging breach of the subcontract, and against the RDA for a declaratory judgment that the RDA improperly and incorrectly found Mands in violation of the Act. Domus filed Preliminary Objections to the Amended Complaint and a Petition to Compel Arbitration based upon the following arbitration provision in the subcontract between Mands and Domus:

Any claim arising out of or related to this Agreement . . . shall be subject to arbitration [before AAA or JAMS].<sup>2</sup>

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<sup>1</sup> Mands was accused of paying its workers less than the prevailing minimum wage and asking for kick-backs.

<sup>2</sup> Subcontract, ¶¶ 6.1 and 6.2. The arbitration provisions contain exceptions that are not applicable here.

Mands' breach of contract claim against Domus is clearly a claim related to the subcontract, so it, standing alone, would be subject to the arbitration provisions of that agreement. However, the RDA is not a party to the subcontract, so it is not bound by the arbitration provisions in it.<sup>3</sup> Therefore, the declaratory judgment claim Mands brought against the RDA cannot be sent to arbitration and must remain before this court.<sup>4</sup>

Since the same issue, whether Mands violated the Davis Bacon Act, is the primary issue raised by both the arbitrable breach of contract claim against Domus and the non-arbitrable declaratory judgment claim against the RDA, the arbitrator and this court would have to hear much of the same evidence and make many of the same determinations regarding the propriety of the RDA's decision. Dividing Mands' claims between an arbitrator and a judge is not only inefficient, it also creates a risk of inconsistent rulings.

[E]nforcement of an arbitration provision where, as here, the underlying dispute includes parties not subject to the arbitration process, would frustrate rather than foster the objectives of alternate dispute resolution. Requiring [Mands] to arbitrate its claims against [Domus] would force [Mands] to relitigate the same liability and damages issues in two separate forums, before two different fact-finders; such repetitious litigation would be uneconomical for the court as well as the parties involved. Thus, in this case, arbitration would not promote the swift and orderly resolution of claims; instead, it would engender a protracted, piecemeal disposition of the dispute.<sup>5</sup>

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<sup>3</sup> See Juniata Valley Bank v. Martin Oil Co., 736 A.2d 650, 663 (Pa. Super. 1999) ("It is a well established principle of law that a contract cannot impose obligations upon one who is not a party to the contract.")

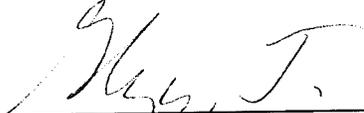
<sup>4</sup> Mands and the RDA entered into a stipulation in which Mands acknowledged that the RDA is immune from damages claims in this action, but Mands continues to press its declaratory judgment claim.

<sup>5</sup> School Dist. v. Livingston-Rosenwinkel, P.C., 690 A.2d 1321, 1323 (Pa. Commw. 1997). See also Univ. Mech. & Eng'g Contrs. v. Ins. Co. of North Am., 2002 Phila. Ct. Com. Pl. LEXIS 42 (2002), *aff'd w/o pub. op.*, 839 A.2d 1172 (Pa. Super. 2003) ("Thus, to avoid repetitive, piecemeal litigation, to achieve as an efficient and orderly disposition of claims as is possible, and to fulfill the goals underlying both arbitration and the joinder of indispensable parties, this court declined to enforce the . . . arbitration provision.")

Because the outcome of Mands' claim against Domus for breach of contract will hinge on the court's resolution of the declaratory judgment action against the RDA, it makes no sense to send the breach of contract claim to a separate arbitration proceeding.

For all the foregoing reasons, Domus' Preliminary Objections are overruled and its Petition to Compel Arbitration is denied.

**BY THE COURT:**

  
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**GLAZER, J.**