

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

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|---------------------------------------|---|------------------|
| SPARTAN DRYWALL BUILDERS, INC. | : | June Term, 2014 |
| | : | |
| <i>Plaintiff</i> | : | Case No. 02448 |
| | : | |
| v. | : | Commerce Program |
| | : | |
| POST GOLDTEX, L.P. | : | |
| and | : | |
| POST GENERAL CONTRACTING | : | |
| | : | 1182 EDA 2015 |
| <i>Defendants</i> | : | |

MEMORANDUM OPINION

Defendants Post Goldtex, L.P. and Post General Contracting have appealed this court's **ORDERS** dated April 8, 2015, which overruled their preliminary objections to the Mechanic's Lien Enforcement Action of plaintiff Spartan Drywall Builders, Inc., denied their motion to stay the Mechanic's Lien Action, and dismissed arbitration proceedings. For the reasons below, this court respectfully suggests that its **ORDERS** dated April 8, 2015 should be affirmed on appeal.

Dated: 6/22/15

BY THE COURT,

McInerney
MCINERNEY, J.

Spartan Drywall Builders, Inc. Vs Post Goldt-MEMOR



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COMMERCE PROGRAM

BACKGROUND

Plaintiff, Spartan Drywall Builders, Inc. (“Spartan”), is a Pennsylvania corporation engaged in the construction business.¹ Defendant, Post Goldtex, L.P. (“Goldtex”), a Pennsylvania limited partnership, owns property located at 315 North 12th Street in Philadelphia, Pennsylvania (the “Property”). Defendant, Post General Contracting (“Post Contracting”), a/k/a Post Brothers Apartment, a/k/a Post Brothers Construction, is a Pennsylvania entity which is alleged to have ownership interest in the Property.²

On October 22, 2012, Spartan and Goldtex entered into a construction contract (the “Agreement”). Pursuant to the Agreement, Spartan undertook to provide drywall installation and related construction work at the Property, and Goldtex agreed to pay Spartan under a Timing and Payment Schedule.³ The Agreement included several documents which together constituted a “Contract Package.”⁴

On February 7, 2014, Spartan filed a Mechanics’ Lien Claim against the Property and any interest therein of its alleged owners, including Goldtex and Post Contracting.⁵ On May 27, 2014, Goldtex filed a praecipe for a rule to file complaint upon the Mechanics’ Lien Claim.⁶ On June 16, 2014, Spartan commenced the instant action by filing a complaint against Goldtex, and Post Contracting. Subsequently, the parties jointly asked this court to stay the instant proceedings pending the outcome of

¹ Plaintiff Spartan’s First Amended Complaint, ¶ 1.

² Id. ¶ 8.

³ Id. Agreement for Critical Business Terms for Construction, Exhibit A thereto.

⁴ Id. The Contract Package included “Building Plans” with revisions and related specifications and bridging documents, a “Bid Proposal from Contractor,” a “Written Scope of Work by Post Brothers” with a “Proposal from Contractor,” the American Institute of Architects’ Standard Form of Agreement Between Contractor and Subcontractor “AIA 401 Contract,” and General Conditions of Contracts “A201 Document,” an “Insurance Certificate from Contractor,” and a “Copy of Lien Waiver.”

⁵ Mechanics’ Lien Claim, docketed at February Term, 2014, case number MO003, also attached as Exhibit 1—A to Spartan’s First Amended Complaint.

⁶ Id.

mediation. On August 7, 2014, this court entered an Order staying the action while mediation was pending, and requiring the parties to report on the status thereof no later than October 31, 2014. On December 15, 2014, a mediation session chaired by a jointly-appointed mediator took place at the offices of Spartan.⁷ At the close of this mediation session, the parties agreed to exchange additional information and to hold a second session on January 16, 2015.⁸ As agreed, Spartan provided to Goldtex and Post Contracting additional information prior to the second mediation session. After receiving the additional information from Spartan, Goldtex and Post Contracting unilaterally “concluded [allegedly with the mediator’s concurrence] ... that a second mediation session was unlikely to resolve the dispute,” cancelled the second mediation session and “filed a demand for arbitration” on January 12, 2015.⁹ On March 2, 2015, Spartan filed its First Amended Complaint which named Goldtex and Post Contracting as defendants. The First Amended Complaint alleges *inter alia* that other entities sharing the same address as Goldtex and Post Contracting are “reputed owners” of the Property.¹⁰ The First Amended Complaint avers that Spartan provided work, equipment and materials in discharge of its obligations under the Agreement, and prays for judgment in the amount of \$259,681.46 against Goldtex and Post Contracting for their failure to pay.¹¹

On March 5, 2015, Goldtex and Post Contracting filed preliminary objections to Spartan’s First Amended Complaint. The preliminary objections assert that the parties

⁷ Averment of defendants Goldtex and Post Contracting in their preliminary objections to the First Amended Complaint, ¶¶ 23–24; admission of plaintiff Spartan in its response in opposition to the preliminary objections, ¶¶ 23–24.

⁸ Admission of defendants Goldtex and Post Contracting in their preliminary objections to the First Amended Complaint, ¶ 26.

⁹ *Id.* at ¶¶ 27–28.

¹⁰ First Amended Complaint, ¶ 8.

¹¹ *Id.* ¶¶ 32–39.

in this action are bound to arbitrate their dispute as required under the specific terms of the Agreement. On the same date, March 5, 2015, Goldtex and Post Contracting also filed a motion to stay proceedings in the instant action and to compel the parties to submit to arbitration. On March 30, 2015, Spartan filed its responses in opposition to the preliminary objections and motion to stay proceedings of defendants. On April 8, 2015, this court entered two Orders denying the motion to stay proceedings and overruling the preliminary objections of defendants Goldtex and Post Contracting. The Orders also dismissed the arbitration proceedings. On April 13, 2015, Goldtex and Post Contracting filed a notice of appeal, and on April 20, 2015, this court entered an Order directing Goldtex and Post Contracting to file a concise statement of errors complained of on appeal. The statement of errors complained of on appeal was filed on April 27, 2015, and the instant *Memorandum* Opinion respectfully asks that its decision be affirmed on appeal.

DISCUSSION

I. Arbitration.

In the statement of errors complained of on appeal, Goldtex and Post Construction argue that this court erred when it overruled their preliminary objections to Spartan's First Amended Complaint. According to Goldtex and Post Construction, the court erred because the parties are bound to submit their disputes to arbitration pursuant to the language in the Agreement.

Tackling the language of the Contract Package, and especially the language contained in the American Institute of Architects Document, No. A-401 ("AIA 401"), and the American Institute of Architects Document, No. A-201 ("A201"), this court was mindful that in Pennsylvania, "questions such as contract ... interpretation are questions

of law and lie peculiarly within the domain of the court.”¹² Furthermore, this court was mindful that—

[i]n construing a contract, the intention of the parties is paramount and the court will adopt an interpretation which under all circumstances ascribes the most reasonable, probable and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished.¹³

In this case, A201 specifically states:

§ 4.5 MEDIATION

§ 4.5.1 Any Claim arising out of or related to the Contract ... shall ... be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.6 ARBITRATION

§ 4.6.1. Any Claims arising out of or related to the Contract ... shall ... be subjected to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.¹⁴

By contrast, AIA 401 specifically states:

§ 6.1 MEDIATION

§ 6.1.1 Any Claim arising out of or related to this Subcontract ... shall be subject to mediation as a condition precedent to binding dispute resolution

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method for binding dispute resolution shall be as follows:

¹² Kardibin v. Associated Hardware, 284 Pa. Super. 586, 595; 426 A.2d 649, 654 (Pa. Super. 1981).

¹³ Walton v. Philadelphia Nat. Bank., 376 Pa. Super. 329, 338; 545 A.2d 1383, 1388 (1988).

¹⁴ AIA Document A201—1997, Exhibit 1A to Spartan’s First Amended Complaint Id. §§ 4.5—4.6.1.

[X] Arbitration pursuant to Section 6.3 of this Agreement

[X] Litigation in a court of competent jurisdiction.¹⁵

Review of the afore-quoted language reveals that under Document A201, arbitration is the required instrument to achieve binding dispute resolution, but only after the parties satisfied the condition precedent of conducting mediation. By contrast, review of the language contained in AIA 401 shows that when the parties fail to resolve any claims through the condition precedent of mediation, then the methods of binding dispute resolution are arbitration or litigation in a court of competent jurisdiction. In other words, a conflict exists between document A201 which first requires mediation and subsequently requires arbitration only, and document AIA 401 which first requires mediation and subsequently allows either arbitration or litigation in a court of competent jurisdiction. To resolve this conflict, the court turned to the language of another component of the Contract Package –namely, the Agreement of Critical Business Terms for Construction (the “Agreement of Critical Business Terms”).¹⁶ This document specifically states:

**AIA 401 AND A201 GOVERNING DOCUMENTS FOR ALL
OTHER TERMS; CONFLICTING STATEMENTS IN DOCUMENTS:**

The AIA 401 form of Contract as well as A201 General Conditions of the Contract shall govern all other terms and conditions of the contract between Contractor and Owner. All blanks to be filled-in in the AIA contracts shall refer to terms in this document.

If there are any conflicting statements in the AIA contract documents or any other document in this contract package, the statements in this document shall supercede [sic] those in the other documents.¹⁷

¹⁵ AIA Document A-401—1997, Exhibit 1A to Spartan’s First Amended Complaint *Id.* §§ 4.5—4.6.1.

¹⁶ Exhibit 1—A to the First Amended Complaint of plaintiff Spartan.

¹⁷ *Id.*, p.5 (emphasis supplied).

The court reviewed the entire Agreement of Critical Business Terms and found that it has no arbitration provision therein. Since the controlling document in the Contract Package does not contemplate arbitration as method for dispute resolution, this court found that arbitration could not be compelled upon any party to the Agreement. For this reason, the court overruled the preliminary objections asserting compulsory arbitration, and dismissed the arbitration proceedings initiated unilaterally by defendants Goldtex and Post Contracting.

II. Joinder of Defendant Post Contracting.

In the statement of errors complained of on appeal, Post Contracting argues that this court erred in overruling their preliminary objections based on improper joinder of defendant Post Contracting. Post Contracting argues that it was engaged in construction work upon the Property as a general contractor on behalf of owner/defendant Goldtex. Therefore, Post Contracting concludes that it was improperly joined in the mechanic's lien action because "[a] mechanic's lien addresses right of parties vis-à-vis a parcel of property and is not intended to settle ... contractual obligations" such as those of a mere general contractor.¹⁸ In this case, however, Spartan asserted in its Mechanic's Lien Claim and First Amended Complaint that the entity known as Post Brothers Apartments, a/k/a Post Contracting, is a "reputed" owner of the Property subjected to the lien.¹⁹ Therefore, at the stage of preliminary objections, the court accepted as true "all material facts as set forth" in the First Amended Complaint and in the Mechanic's Lien Claim attached thereto, and accepted as true the averment asserting that Post Contracting, a/k/a/ Post Brothers Apartments, is a reputed owner of

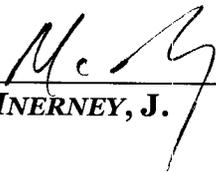
¹⁸ Preliminary objections of defendants Goldtex and Post Contracting, ¶ 52.

¹⁹ Mechanic's Lien Claim, February Term, 2014, No. M0003, ¶ 2; First Amended Complaint, ¶ 8.

the Property.²⁰ At this stage, Post Contracting is a reputed owner of a Property which is subjected to a lien, and joinder of such defendant in the Mechanic's Lien Action was proper. Based on the above, this court respectfully suggests that it did not err when it overruled the preliminary objections asserting that Post Contracting had been improperly joined as a general contractor.

Dated 6/27/15

BY THE COURT,



MCINERNEY, J.

²⁰ "In determining the merits of a demurrer, all well-pleaded, material facts set forth in the complaint and all inferences fairly deducible from those facts are considered admitted and are accepted by the trial court...." Foster v. UPMC S. Side Hosp., 2010 Pa. Super. 143; 2 A.3d 655, 665 (Pa. Super. 2010).