

LEGAL NOTICES

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11/26,12/3,12/10/99

FICTITIOUS NAME NOTICES

NOTICE is hereby given, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, or the filing, with the Department of State of the Commonwealth of Pennsylvania, on November 2, 1999, of an application for a certificate for the conducting of a business under the assumed fictitious name of Stoops Construction with its principal place of business at 7370 Lincoln Way West, St. Thomas, PA 17252. The name and address of the person owning or interested in said business is Jeremiah Stoops.

SHARPE, GABLER & SHARPE
257 Lincoln Way East
Chambersburg, PA 17201

12/10/99

CIESCO, INC., Plaintiff v. FEDERAL INSURANCE COMPANY, Defendant, C.P. Franklin County Branch, Civil Action - Law, No. 1999-20344

Ciesco, Inc. V. Federal Insurance Company

Forum Selection Clauses - Jurisdiction

1. A forum selection clause does not necessarily deprive a Pennsylvania court of jurisdiction.
2. A Pennsylvania court should decline to exercise jurisdiction when the parties have freely agreed that litigation shall be conducted in another forum and where the agreement is not unreasonable at the time of litigation.
3. An agreement is unreasonable if it would seriously impair the plaintiff's ability to pursue a cause of action; however, mere inconvenience and additional expense do not make an agreement unreasonable if the party received extra consideration for the agreement.
4. Where the forum selection clause in a labor and material payment bond authorizes suit to be brought in the state where the project or any part thereof is situated, the court will exercise jurisdiction if an inherent part of the finished project occurred in the county and the third party to the agreement did not receive consideration for the forum selection clause.

Thomas C. Beckley, Esquire and John G. Milakovic, Esquire,
Counsel for plaintiff

James M. Bucci, Esquire, Counsel for defendant

Factual and Procedural History

Petraka & Sons, Inc. (hereinafter Petraka), a New York corporation, contracted with the New York City School Construction Authority to design and build a modular addition to Public School 340 in the Bronx, New York. As a condition of the contract, Petraka was required to obtain a labor and material payment bond. The defendant, Federal Insurance Company (hereinafter Federal), as surety, issued a bond to Petraka. Paragraph 3(c) of the bond states that no lawsuit shall be commenced by any claimant

“other than in a State Court of competent jurisdiction in and for the county or other political subdivision of the state in which *the*

project or any part thereof is situated or in the United States District Court for the district in which the project, or any part thereof is situated, and not elsewhere.”

Subsequently, Petraka entered into a subcontract with C-Lane, Inc. (hereinafter C-Lane), a Pennsylvania corporation located in Greencastle, Franklin County, Pennsylvania. C-Lane agreed to supply the modular structural units that Petraka was intending to use for the project in the Bronx. C-Lane purchased the materials and supplies for the modular addition from the plaintiff, CIESCO, Inc. (hereinafter CIESCO), a Pennsylvania corporation. C-Lane constructed the modular addition in Franklin County and then shipped it to Petraka in New York. However, C-Lane did not pay CIESCO for the materials and supplies.

CIESCO filed suit against Federal, as surety, on the labor and material payment bond on the grounds that CIESCO was a second tier supplier on the Bronx Public School 340 project. Federal filed preliminary objections to the complaint alleging that this court did not have jurisdiction. An argument on Federal’s preliminary objections was held on September 2, 1999. Federal argued that the language in the bond required CIESCO to commence an action in New York and not anywhere else. CIESCO argued that the language in the bond could not divest this court of jurisdiction.

Discussion

A forum selection or consent to jurisdiction clause does not necessarily operate to deprive Pennsylvania courts of jurisdiction. *Churchill Corp. v. Third Century, Inc.*, 396 Pa. Super. 314, 320 (1990). Although a Pennsylvania court may have jurisdiction over a cause of action, it should

“decline to proceed with the cause when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation.”

Id. at 321. An agreement is unreasonable if, at the time of the litigation, enforcement of the agreement would “seriously impair plaintiff’s ability to pursue its cause of action.” *Id.* at 321-322. However, mere inconvenience and additional expense are not the test for unreasonableness if the party received consideration for the agreement to litigate in a specified forum. *Id.* at 322.

The court must first determine whether it has jurisdiction over this cause of action. The key to determining whether the court has jurisdiction is to define the term project. This word is defined as “a plan or proposal, scheme” or “an undertaking requiring concerted effort.” *The American Heritage Dictionary* 661 (3d 1994). In *Bielski v. Borough of Jefferson*, 112 P.L.J. 228, 230 (1964), the court used Webster’s Dictionary to define project as a planned undertaking. The court then determined that legal work was inherent in the project of establishing and maintaining a water and sewage system. *Id.*

In this case, the labor and material payment bond authorizes suit in “the state in which the *project or any part thereof* is situated.” The definition of the term project is a planned undertaking. The subject of the contract between the general contractor, Petraka, and the surety, Federal, is the construction of a modular addition for Public School 340. In order to construct the modular addition, there must be materials. The materials used for the modular addition which were supplied by CIESCO are an inherent part of the finished project, the construction of the modular addition. Thus, this court has jurisdiction over this lawsuit.

The next question the court must answer is whether it should exercise jurisdiction. CIESCO was not a party to the bond between Petraka and Federal. Therefore, CIESCO did not agree to New York as the forum state. Furthermore, CIESCO did not have an opportunity to object to the forum

selection clause of the contract between Petraka and Federal. Because CIESCO was not a party to the contract, CIESCO would not have received extra consideration for specifying New York as the forum. As a result, the court may consider the inconvenience and expense incurred by CIESCO in proceeding with this case in New York. CIESCO and C-Lane are Pennsylvania corporations. C-Lane did not pay CIESCO for the materials it bought to construct the modular addition. The people having knowledge of the contract between CIESCO and C-Lane for the materials for the modular addition are located in Pennsylvania. Therefore, it would be more convenient and less expensive to try this case in Pennsylvania.

It is this court's opinion that this lawsuit could have been brought in either Pennsylvania or New York. Because the plaintiff chose to file its lawsuit in Pennsylvania, a proper jurisdiction, the court will exercise jurisdiction over this lawsuit.

ORDER OF COURT

November 17, 1999, after consideration of defendant's preliminary objections to jurisdiction, plaintiff's response, the briefs submitted to the court, and the parties' arguments, defendant's preliminary objections are overruled.

DENIAL

Denial is the state of mind of a chemically dependent person which prevents them from seeing the truth about their use of alcohol or other drug.

Denial allows the alcoholic or addict to keep using their drug of choice despite adverse consequences.

Denial allows the disease of addiction to progress causing increasingly more harm to the person's physical and emotional health and their personal and professional lives.

The disease of addiction will eventually lead to divorce, disbarment and early death.

If you are concerned about a fellow attorney, judge, law student or a family member, then you can act to interrupt their denial and disease. Your call may save their life.

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