BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of S.J. GROVES & SONS COMPANY	)	
	)	Docket No. MSBCA 1640
Under SHA Contract No. A 519-504-670	)	

July 13, 1993

Delay - Accord and Satisfaction - Where the general contractor's claims for delay damages are extinguished through an accord and satisfaction, the claims of its subcontractors based on the same events and time periods are likewise extinguished unless expressly reserved or excepted.

APPEARANCE FOR APPELLANT: Robert S. Paye, Esq.
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APPEARANCE FOR RESPONDENT: Dana A. Reed
Asst. Attorney General
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OPINION BY CHAIRMAN HARRISON

The State Highway Administration (SHA) has moved for summary disposition of the above captioned appeal on grounds that the appeal is barred by accord and satisfaction. For reasons that follow we shall grant the motion.

Findings of Fact[1]

1. Appellant was the general contractor on the above captioned contract which including grading, drainage and paving a portion of U.S. Route 48 in Allegany County. Sheila S. Mattingly t/a Mattingly Builders (Mattingly) and WOCAP Energy Resources, Inc. (Wocap) were subcontractors for performance of certain of the work.
2. The project's initial notice to proceed date was November 4, 1986. However, SHA did not have some necessary environmental permits (Waterway Construction Permits) and on or about October 28, 1986 SHA rescinded the November 4 start

[1]The findings of fact as set forth below are not in dispute and are extracted from the pleadings and the record as a whole.

date. Appellant was given verbal notification that the permits had been received on February 18, 1987.

3. On March 20, 1987 Appellant submitted to SHA a claim for damages suffered as a result of the delay in the notice to proceed. On December 23 and 24, 1987, Appellant submitted claims on behalf of Mattingly and Wocap for delay damages arising out of the same delay to the start of the job caused by the lack of the Waterway Construction Permits. By letter dated March 22, 1988, SHA returned the Mattingly and Wocap claims to Appellant, stating that Mattingly and Wocap were not approved subcontractors at the time the delay occurred.

4. On May 16, 1988, SHA issued Extra Work order #3 to the contract (EWO #3). EWO #3 authorized the payment to Appellant of $476,744.06 "to compensate the Contractor for costs incurred due to a delay in obtaining the Waterway Construction Permits from the Water Resources Administration and the U.S. Corps of Engineer's on the subject contract." The EWO states that the time frame covered by the claimed delay was October 29, 1986 to February 18, 1987. EWO #3 thus covers the same causes and periods of delay as set forth in the claims of Mattingly and Wocap previously filed on their behalf by Appellant and returned by SHA as set forth above.

5. EWO #3 also contains the following language commonly found in SHA EWO's at the time of its execution:

CONTRACTOR'S ACCEPTANCE

THE TERMS AND CONDITIONS OF THIS EXTRA WORK ORDER, INCLUDING THE AMOUNT AND TIME CONTAINED HEREIN, CONSTITUTE A FULL ACCORD AND SATISFACTION BY THE ADMINISTRATION AND THE CONTRACTOR FOR ALL COSTS AND TIME OF PERFORMANCE RELATED TO THE ACTIONS DESCRIBED OR REFERENCED HEREIN, INCLUDING BUT NOT LIMITED TO DELAY AND IMPACT RESULTING FROM THIS EXTRA WORK ORDER.

While this language was commonly found in SHA EWO's the parties to an SHA EWO could vary its terms.

6. On May 20, 1988 Ronald B. Bashore, Appellant's project manager, signed EWO #3 on behalf of Appellant. Appellant made no reservation or exception for the Mattingly and

Wocap claims on the EWO. Subsequently EWO #3 was ratified by SHA and payment of $476,744.06 was made to Appellant.

7. On August 17, 1989, Appellant transmitted to SHA letters from Mattingly and Wocap taking issue with SHA's refusal in March, 1988 to consider their claims because they were not approved subcontractors.

8. By letter dated September 19, 1989, the SHA District Engineer responded to Appellant, stating that he had reviewed the claims and that EWO #3 constituted full accord and satisfaction of the entire dispute growing out of the suspension of work caused by the lack of permits.

9. In February, 1990, Appellant notified the Chief Engineer that it was challenging the District Engineer's decision on behalf of Mattingly and Wocap. By letter dated November 21, 1991 Appellant submitted these claims to the SHA Chief Engineer.

10. By letter dated March 17, 1992, the SHA Chief Engineer denied Appellant's claims on behalf of Mattingly and Wocap on the ground that EWO #3 was a full accord and satisfaction on all claims relating to the delay in obtaining the waterway permits.

11. Appellant appealed this denial to this Board on April 10, 1992. SHA filed its Motion for Summary Disposition on May 21, 1993.

Decision

Maryland follows the objective law of contracts. As the Court of Appeals observed in State v. Attman/Glazer, 323 Md. 592, 604-605 (1991):

> *We have long adhered to the law of objective interpretation of contracts. Cloverland Dairy Farms, Inc. v. Fry, 322 Md. 367, 373, 587 A.2d, 527, 530 1991); Feick v. Thrutchly, 322 Md. 111, 114, 586 A.2d 3, 4 (1991); General Motors Acceptance Corp. v. Daniels, 303 Md. 254, 261, 492 A.2d 1306, 1310 (1985); Orkin v. Jacobson, 274 Md. 124, 128, 332 A.2d 901, 903 (1975); Kasten Constr. v. Rod Enterprises, 268 Md. 318, 329, 301 A.2d 12, 18 (1973). Thus, in interpreting a contract the court must*
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> > *"determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition,*

> *when the language of the contract is plain and unambiguous there is no room for construction, a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant. Consequently, the clear and unambiguous language of an agreement will not give away to what the parties thought that the agreement meant or intended it to mean."*
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> *General Motors Acceptance Corp. v. Daniels, 303 Md. at 261, 492 A.2d at 1310. The test of ambiguity is whether, considering "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution," Pacific Indem. Co. v. Interstate Fire & Cas. Co., 302 Md. 383, 388, 488 A.2d 486, 488 (1985), the language used in the contract, when read by a reasonably prudent person, is susceptible of more than one meaning. Heat & Power v. Air Products, 320 Md. 584, 596, 578 A.2d 1202, 1208 (1990).*

As a result of this rule, when contractual language is clear and unambiguous, and in the absence of fraud, duress or mistake, parol evidence is not admissible to show the intention of the parties, or to vary, alter, or contradict the terms of the contract. We find no ambiguity in the language of EWO #3[1] nor is there evidence in the record in this appeal of fraud, duress or mistake. We, therefore, may not consider Appellant's extrinsic evidence to the effect that the parties only intended EWO #3 to deal with the claims of Appellant itself and that the Mattingly and Wocap claims were not included.

The clear and unambiguous language of EWO #3 reflects that SHA and Appellant agreed that the $476,744.06 paid to Appellant

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[1] Appellant argues that use of the word "contractor" rather than "contractor and its subcontractors, suppliers and materialman" in EWO #3 creates an ambiguity as to whether an accord and satisfaction exists as to anyone other than Appellant. We disagree since under the General Procurement Law claims are required to be brought by the general contractor, i.e. the "contractor" who has a procurement contract with the State, on behalf of its subcontractors.

pursuant to EWO #3 was to be full accord and satisfaction of all costs related to the delay in the start of the job from October 29, 1986 to February 18, 1987 caused by the fact that SHA did not have the necessary environmental permits. Appellant's claim on behalf of Mattingly and Wocap was initially presented to and rejected by SHA before EWO #3 was signed, indicating that Appellant was aware, when it agreed to EWO #3, that Mattingly and Wocap claimed to have been damaged by this delay. Despite this knowledge, Appellant did not indicate that it was excepting these claims from the all-inclusive language of the EWO, nor did it reserve the right to resubmit these claims in the future.

While mutual intent of the parties is required to establish an accord and satisfaction, accord and satisfaction is essentially contractual. Automobile Trade Association of Maryland v. Harold Folk Enterprises, Inc., 301 Md. 642, 666, 484 A.2d 612, 624 (1984). To constitute accord and satisfaction there must be an offer of money in satisfaction of a claim, accompanied by expressions sufficient to make a reasonable creditor understand that the money is offered in full satisfaction of the claim. Washington Homes, Inc. v. Baggett, 23 Md. App. 167, 174, 326 A.2d 206, 210 (1974), cert. denied, 273 Md. 723 (1975). SHA bears the burden to show accord and satisfaction. Intercounty Construction Corporation, MSBCA 1056, 2 MSBCA ¶ 130 at p.8 (1986). However, the burden is met here since there can be no question that a reasonable person would interpret the clear and unambiguous language of EWO #3 to mean that any further claims by Appellant for costs arising out of delay to the project, such as the claims at issue in the present appeal, are barred by EWO #3. The claims and appeals of Mattingly and Wocap are required to be pursued through Appellant as general contractor. Sections 15-217 to 15-220, Division II, State Finance and Procurement Article. Accordingly, the Motion for Summary Disposition of Appellant's appeal (on behalf of Mattingly and Wocap) is granted.

Therefore, it is this 13th day of July, 1993 Ordered that the appeal of S.J. Groves and Sons Company is dismissed with prejudice.

Dated: July 13, 1993

Robert B. Harrison III
Chairman

I concur:

Neal E. Malone
Board Member

Sheldon H. Press
Board Member

Certification

COMAR 21.10.01.02 Judicial Review.

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule B4 Time for Filing

a. Within Thirty Days

An order for appeal shall be filed within thirty days from the date of the action appealed from, except that where the agency is by law required to send notice of its action to any person, such order for appeal shall be filed within thirty days from the date such notice is sent, or where by law notice of the action of such agency is required to be received by any person, such order for appeal shall be filed within thirty days from the date of the receipt of such notice.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals Decision in MSBCA 1640, appeal of S.J. GROVES & SONS COMPANY under SHA Contract No. A 519-504-670.

Dated: July 13, 1993

Mary F. Priscilla
Recorder