

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE MOUNTBATTEN SURETY COMPANY, INC. : CIVIL ACTION
: :
v. : :
: :
NATIONAL FIRE INSURANCE COMPANY OF : :
HARTFORD : NO. 00-850

MEMORANDUM AND ORDER

Fullam, Sr. J.

June , 2000

In connection with a major construction project at the Philadelphia International Airport, the Dick Corporation acted as general contractor, and a firm named R&R Geo-Construction, Inc. ("R&R") was a subcontractor. The defendant National Fire Insurance Company of Hartford is the surety on a payment bond for the Dick Corporation, and plaintiff is the surety on R&R's performance bond. R&R defaulted in its contract performance, and was dismissed from the job, and the Dick Corporation made claims against plaintiff, as R&R's surety.

Plaintiff then entered into a "Takeover Agreement" with the Dick Corporation, undertaking to complete the work that R&R had failed to perform. Plaintiff alleges that it has now completed the required work, but has not been paid for it; plaintiff thereupon has brought this action against the National Fire Insurance Company of Hartford, as the surety on Dick Corporation's payment bond.

The defendant now seeks dismissal of the complaint, for failure to join indispensable parties; alternatively, defendant seeks a stay of this litigation in deference to an action pending in the Court of Common Pleas of Allegheny County, Pennsylvania, in which the Dick Corporation is suing both R&R and plaintiff.

I conclude that the motion to dismiss for failure to join indispensable parties is without merit. The suggested indispensables (R&R, as plaintiff's principal; and the City of Philadelphia for allegedly requiring plaintiff to perform more concrete work than the Dick Corporation obligated itself to pay) are not truly indispensable, and their joinder would destroy diversity. The present action can readily proceed in their absence.

The pending action in Allegheny County does not, in my view, provide a basis for dismissing or staying the present case. The complaint in our case was filed before the complaint in the Common Pleas action, and also before service of the praecipe and summons in that case. There is no compelling reason to suppose that the issues between this plaintiff and this defendant would be resolved better, or more quickly, in either court than in the other. Indeed, the bond upon which the present action is predicated contains a very precise forum-selection clause, limiting venue to "a court of competent jurisdiction in the location in which the work or part of the work is located..." -

i.e., Philadelphia. Plaintiff could not properly have brought this action in the Pittsburgh court. The defendant's motion will be denied in all respects.

An Order follows.

