

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

THE NORWOOD COMPANY	:	MISCELLANEOUS NO. 02-46
	:	
	:	
v.	:	
	:	
	:	
BENNETT COMPOSITES, INC.	:	

MEMORANDUM

This action arises out of a dispute concerning two subcontracts between contractor, The Norwood Company (“Norwood”), a Pennsylvania company, and subcontractor, Bennett Composites, Inc. (“Bennett”), an Alabama company. Under each subcontract, Bennett was to furnish and install Glass Fiber Reinforced Concrete (“GFRC”) panels on two projects in King of Prussia, Pennsylvania. Norwood alleges that Bennett breached the subcontract governing its project at 935 First Avenue (“935 Project”), which had a contract sum of \$391,827.00. Norwood further alleges that Bennett breached the subcontract governing its project at 2301 Renaissance Boulevard (“2301 Project”), which had a contract sum of \$1,438,816.00.

On February 26, 2002, Norwood filed an Application to Appoint Arbitrator in this Court pursuant to the Federal Arbitration Act, 9 U.S.C. §5, which states that if the arbitration agreement between the parties does not provide a method for naming or appointing an arbitrator, “then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein.”

This Court has subject matter jurisdiction pursuant to 9 U.S.C. § 2 because the underlying dispute concerns transactions involving commerce, and pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000.00 and is between parties who are citizens of different States. Venue is proper because a substantial portion of the transactions occurred in the Eastern District of Pennsylvania, and the construction projects which are the subject of this dispute are located here. Further, the arbitration agreement in the subcontracts between the parties provides that unless the contractor (Norwood) elects otherwise, all claims and disputes are to be arbitrated in Philadelphia, Pennsylvania.

In late November 2001, Bennett commenced an action against Norwood and others in an Alabama state court, concerning the 935 Project and 2301 Project. Norwood responded with a Motion to Stay with respect to Norwood and a Motion to Compel Arbitration. On May 23, 2002, the Alabama state court granted in its entirety Norwood's Motion to Compel Arbitration.

Norwood advised Bennett of its election to arbitrate in Philadelphia and commenced an arbitration against Bennett before the American Arbitration Association ("AAA") at its Philadelphia office requesting an arbitrator experienced in GFRC panels or precast concrete.

Bennett objected to AAA proceeding on the basis that AAA was not specifically named in the subcontracts' arbitration clause. AAA has withheld administration of the arbitration since that time.

On March 5, 2002, this Court (Reed, S.J.) entered a Rule to Show Cause ordering that Bennett demonstrate in writing why this Court should not compel arbitration, appoint an arbitrator pursuant to the contract and the Federal Arbitration Act, and instruct the arbitrator to forthwith conduct proceedings in Philadelphia.

Bennett filed its Response to this Court's Rule to Show Cause, asserting that this Court did not have jurisdiction because there was not complete diversity between the parties, that the Federal Arbitration Act did not give a federal court a separate basis for jurisdiction, and that the substantive law of Pennsylvania did not apply.¹

Bennett later filed a Supplemental Response to this Court's Rule to Show Cause, also filed in Alabama state court, citing a recently discovered letter dated March 27, 2001, from Norwood to Bennett, that Bennett alleged revised the parties' subcontractual arbitration agreement.

Norwood filed a Request for Modification of Requested Relief, citing the March 27, 2001 letter between the parties, which revised the standard arbitration clause in the 935 Project subcontract so that disputes on that project would be brought before AAA in Philadelphia. On the basis of this letter, neither party opposes AAA arbitration in Philadelphia of the 935 Project dispute.

Norwood, however, has showed that the revised arbitration clause, which applied to the 935 Project, was deleted from the 2301 Project subcontract, thereby leaving the original arbitration agreement intact as to the 2301 Project. The original clause provided that unless the contractor (Norwood) elected otherwise, all claims and disputes were to be arbitrated in Philadelphia. Norwood requested that this Court appoint an arbitrator or arbitrators for the 2301 Project, and that said arbitrator or arbitrators could be the same arbitrator or arbitrators agreed

¹Bennett asked this Court to dismiss Norwood's Application to Appoint Arbitrator or in the alternative to abstain pursuant to the Younger abstention doctrine, Younger v. Harris, 401 U.S. 37 (1971) and/or the Anti-Injunction Act, 28 U.S.C. § 2283. Enforcement of a standard arbitration clause in a construction agreement does not implicate Younger or the Anti-Injunction Act.

upon for Project 935.

Bennett filed its Response Opposing Norwood's Request for Modification of Requested Relief, claiming that the Alabama state court retained jurisdiction over the arbitration and that Alabama law governed the Project 2301 dispute. Bennett further asked for a special master to preside over the Project 2301 dispute.

Norwood then filed its Reply to Bennett's Opposition to Norwood's Request for Modification of Requested Relief. Norwood asserted that the Alabama state court did not retain jurisdiction over Bennett's dispute with Norwood and had no authority to act on the underlying dispute once it had compelled arbitration nor to appoint a special master.

Shortly thereafter, Bennett sent this Court a copy of its "Stipulation As to Arbitrator/Special Master," filed in Alabama state court, in which it claimed that the parties stipulated to a retired U.S. District Judge from Alabama serving as arbitrator/special master. Norwood responded in a letter to this Court stating that it had never stipulated to an any arbitrator/special master and that the Alabama state court had no authority to make such an appointment.

Based on the foregoing, it is clear that the subcontracts governing both the 935 Project and the 2301 Project provide for arbitration at the election of the contractor (Norwood) to take place in Philadelphia. Consequently, Norwood's Application to Appoint Arbitrator will be granted. Because there is no dispute that the subcontract governing the 935 Project provides for AAA to arbitrate in Philadelphia any disputes concerning that project, decisional economy and efficiency warrant appointing AAA to arbitrate also the 2301 Project dispute in Philadelphia. Arbitration procedures and costs are to be decided by AAA under its Construction Industry

Rules.

An appropriate Order follows.

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BENNETT COMPOSITES, INC.	:	

ORDER

AND NOW, this 23rd day of July, 2002, it is hereby
ORDERED that Norwood's request for APPLICATION TO APPOINT
ARBITRATOR is GRANTED.

The American Arbitration Association, which both parties agree will arbitrate the
dispute regarding the 935 Project, is hereby appointed to arbitrate the dispute regarding the 2301
Project with all procedures including costs to be decided by the American Arbitration
Association in accordance with its Construction Industry Rules.

BY THE COURT:

MICHAEL M. BAYLSON, J.

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