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**GEFA v. CH2M Hill Eng., ORDER DENYING MOTION FOR PARTIAL
RECONSIDERATION**

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Senior Judge, Fulton County Superior Court Business Case Division

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Georgia Business Court Opinions 506 (2022)
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IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

GEORGIA ENVIRONMENTAL FINANCE
AUTHORITY,

Plaintiff,

v.

CH2M HILL ENGINEERS, INC.,
LAYNE CHRISTENSEN COMPANY,
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA and LIBERTY
MUTUAL INSURANCE COMPANY,

Defendants.

CIVIL ACTION NO.

2018CV308768

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERTAION

This matter comes before the Court on Plaintiff's Motion for Partial Reconsideration, filed January 21, 2022 ("Motion"). Having reviewed the record and considered the arguments and submissions of counsel, the Court enters the following order.

I. BACKGROUND

This construction dispute concerns the failed effort to construct a deep, fresh water well in Tybee Island, Georgia (the "project"). The parties include the project's owner, Plaintiff Georgia Environmental Finance Authority ("GEFA"), the project's designer and construction site supervisor, Defendant CH2M Hill Engineers, Inc. ("CH2M"), and its builder, Defendant Layne Christensen Company ("Layne"). The complex set of facts is fully outlined in the Court's Order Denying Motions for Summary Judgment, entered January 5, 2022 ("Order") which is incorporated herein by reference. The Order addressed four different motions for summary

judgment, and GEFA moves the Court to reconsider its decision “solely with respect to the applicability of the Spearin doctrine” which was addressed in GEFA’s Motion for Partial Summary Judgment against Layne. (Motion, p. 1 , n. 1; Order, pp. 17-19 .)

II. STANDARD OF REVIEW

Under Georgia law, this Court has broad discretion to reconsider an order rendered during the same term of court. See Masters v. Clark, 269 Ga. App. 537, n. 4 (2004) (“[a] trial judge has ‘inherent power during the same term of court in which the judgment was rendered to revise, correct, revoke, modify or vacate such judgment ... for the purpose of promoting justice and in the exercise of a sound legal discretion’”) (internal citation omitted); Cochran v. Emory Univ., 251 Ga. App. 737, 739 (2001) (“[w]hether to grant a motion for reconsideration after ruling on an issue lies within the sound discretion of the trial court”).

III. ANALYSIS

The Spearin doctrine was first established in United States v. Spearin, 248 U.S. 132 (1918), and later recognized by the Georgia Supreme Court in Decatur County v. Prayton, Howton & Wood Contracting Co., 165 Ga. 742 (1928). It provides, “[i]f a contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in plans and specifications.” Id. at 760. In sum, under Spearin, an owner retaining a contractor for a construction project impliedly warrants the suitability of the plans and specifications it requires that contractor to use. Federal courts construing Spearin have established a general rule that, “the contractor must fully comply with and follow the design specifications, although faulty, to enjoy the protections of the implied warranty.” Travelers Cas. & Sur. of Am. v. United States, 74 Fed. Cl. 75, 89-90; see also Al Johnson Constr. Co. v. United States, 74 F.2d 467, 469-70 (Fed. Cir. 1988). Layne invoked the Spearin doctrine in defense of

GEFA's breach of contract claim and in support of its own counterclaim against GEFA for breach of the implied warranty of suitability of design plans and specifications.

As reflected in the Order, the original Technical Specifications, prepared by CH2M required Layne to construct the well's screen assembly using blank casing with a wall thickness of 0.365 inches. (Ord., p. 5.) However, during construction CH2M changed the design of the well's screen assembly and directed Layne to use a thinner wall casing that was 0.25 inches thick. (Id., p. 6.) No formal change order documented this modification. (Id.) Subsequently, the well suffered a collapse or partial deformation which ultimately led GEFA to file this lawsuit. (Id. at pp. 6-8.)

GEFA argues the Spearin doctrine is inapplicable because Layne deviated from the original Technical Specifications found in the Contract Documents without securing a written change order. (Mot., p. 4.) However, the record contains some evidence, including testimony from GEFA's corporate representative, that: (1) the parties anticipated adjustments to the well's screen assembly might be necessary once the drilling commenced and more was known about the subsurface geologic conditions and (2) any such changes to the well's screen assembly would be addressed in a final change order after the project concluded.¹ (Ord., pp. 11, 19.) Consequently, the Court found a jury would need to determine if the parties intended to use a post-construction change order to document CH2M's as-built design such that the well Layne constructed was in compliance with the project's plans and specifications, triggering the protections of Spearin. (Id.)

In support of its request for reconsideration, GEFA cites Jonovich Companies, Inc. v. City of Coolidge, 2011 WL 5137180 (Ariz. Ct. App. October 31, 2011). In Jonovich, the owner and

¹ GEFA has offered conflicting evidence that the post-construction change order was never intended to address design changes, and its only purpose was to account for a cost reconciliation as to the amount of materials actually used during construction. (Ord., n. 49.)

contractor entered into a contract for construction of a pipeline, and the project was overseen by an engineer. Id. at * 1. According to the engineer's plans and specifications, the contractor was required to use a designated type of sand and gravel as bedding material for the pipeline; however, the contractor used native soils in some areas. Id. The contractor claims the engineer either verbally approved the change or inspected the work site without raising concerns so that its approval of the alternate bedding materials could be inferred. Id. Subsequently, certain sections of the pipeline deflected to an impermissible degree. Id. While the contractor replaced the deflected segments, it later sued the owner for breach of contract. Id. at *1-2. The contractor argued the pipeline's failure was caused by the engineer's deficient design such that the contractor could not be held liable for the repairs under Spearin. Id.

The trial court granted summary judgment to the owner based on the contractor's non-compliance with the project's specifications. Id. at *2. On appeal, the contractor argued the summary judgment was erroneous based on evidence of the engineer's verbal or tacit approval of the bedding materials used by the contractor which created a question of fact as to its compliance with the plans and specifications. Id. Based upon express provisions of the contract requiring written change orders and limiting the engineer's ability to informally alter contract requirements, the appellate court rejected this argument and affirmed the summary judgment. Id. at *3-4. GEFA argues this same rationale applies here. (Mot., p. 6.)

As an unpublished opinion from another jurisdiction, Jonovich has no precedential value. Moreover, it may be distinguished in a key respect that leaves it without persuasive value in this matter. Unlike the present case, there was no evidence in Jonovich that the owner anticipated the use of a post-construction change order to memorialize changes to the Contract Documents. Accordingly, the Court will not reconsider its decision as it finds disputed questions of fact exist

regarding the intended scope of the post-construction change order which must be decided by a jury in order to determine the applicability of the Spearin doctrine.

IV. CONCLUSION

In light of the foregoing, it is hereby ordered and adjudged that GEFA's Motion for Partial Reconsideration be **DENIED**.

So ordered this 10th day of March, 2022.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Metro Atlanta Business Case Division
Atlanta Judicial Circuit

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Fulton County Superior Court, Civil Action No. 2018CV308768
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