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Order on Motion to Compel Arbitration (Fulton County School District)

Melvin K. Westmoreland
Fulton County Superior Court, Judge

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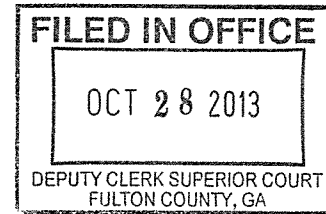
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

FULTON COUNTY SCHOOL DISTRICT,
Plaintiffs,

v.

H.J RUSSEL & COMPANY, LEWIS
TRUCKING & GRADING, INC.,
PROCARE ENVIRONMENTAL
SERVICES, L.L.C. and GREEN'S LAWN
& LANDSCAPING, INC.,
Defendants.



H.J RUSSEL & COMPANY,
Defendant, Cross-claim
Plaintiff,

v.

LEWIS TRUCKING & GRADING, INC.,
PRO CARE ENVIRONMENTAL
SERVICES, L.L.C. and GREEN'S LAWN
& LANDSCAPING, INC.,
Cross-claim Defendants

CIVIL ACTION FILE NO:

2011CV198988

H.J. RUSSEL & COMPANY
Third-Party Plaintiff

v.

AMERICAN SOUTHERN INSURANCE
COMPANY, WESTCHESTER FIRE
INSURANCE COMPANY, GALLET &
ASSOCIATES, INC. f/k/a GALLET &
ASSOCIATES OF GEORGIA, INC.,
TERRACON CONSULTANTS, INC. f/k/a
GALLET & ASSOCIATES, INC.,
PARSONS ENVIRONMENTAL &
INFRASTRUCTURE GROUP, INC., f/k/a
PARSONS COMMERCIAL
TECHNOLOGY GROUP, INC.,
SOUTHLAND SERVICES, INC. and
MATRIX ENGINEERING GROUP, INC.
Third-Party Defendants

ORDER ON MOTION TO COMPEL ARBITRATION

This matter is before the Court on H.J. Russell & Company's ("Russell") Motion to Compel Arbitration. Upon consideration of the motion, the briefs submitted therewith, and the record of the case, this Court finds as follows:

Russell moves this Court to compel arbitration with regard to all claims and parties in this case, including Parsons Environment & Infrastructure Group, Inc. (“Parsons”), who has a contractual agreement to arbitrate its claims with Plaintiff Fulton County School District (“FCSD”). In support of its request to include all claims, in addition to the claims between FCSD and Parsons that are subject to the arbitration clause, it argues the claims in this case are “intertwined, interrelated, and interdependent” and “arise from the same set of facts” as the claims between Parsons and FCSD subject to the arbitration agreement.

Georgia courts will bind a non-signatory to an arbitration agreement under certain circumstances, such as when the claims arise directly and indirectly from the contract containing the clause and to avoid the risk that pursuing claims in separate forums may result in conflicting decisions. Autonation Financial Services Corp. v. Arain, 264 Ga. App. 755 (2003).

This case involves a dispute over the design and construction of Phase II of Westlake High School, which involved certain site grading, the construction of a baseball field, installation of drainage structures around the baseball field and the design and construction of 11 mechanically stabilized retaining walls. After the work was completed problems arose, including, among other things, the collapse of one of the retaining walls and drainage issues with the ball field. The finder of fact will be called on to determine whether or not the retaining walls were designed and constructed appropriately and whether they need replacing, and if so, the cost of any such replacement.

The arbitration clause at issue is between FCSD and Parsons, who was hired as the program manager to generally oversee the design and construction of the retaining walls at issue, among other aspects of the project. All parties to this action have agreed to arbitrate this matter with the exception of Green’s Lawn & Landscaping, Inc. (“Greens”), who designed and built the retaining walls, and Gallet & Associates, Inc. f/k/a Gallet & Associates of Georgia, Inc. and Terracon Consultants, Inc., f/k/a Gallet & Associates, Inc. (“Gallet”), who was hired to be the geotechnical inspector for the retaining wall construction. The Court finds that the claims in this case, including the claims associated with Greens

and Gallet, will rise and fall on the determination of whether the retaining walls are appropriately designed and constructed. As such, the Court finds a sufficient basis on which to compel Greens and Gallet to arbitrate under Georgia law because arbitration will: (1) shorten the length of time required to conclude the litigation; (2) lessen the expense to all parties; and (3) reduce the risk of inconsistent adjudications of common factual and legal issues.

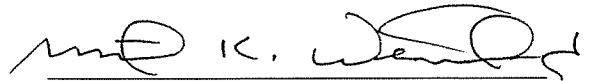
Regardless, even if Georgia authority does not support the application of the contractual arbitration clause at issue to include the claims involving Greens and Gallet, the Court nevertheless has authority to order parties to arbitration consistent with Rule 12, Atlanta Judicial Circuit Rule 1004 (the “Business Court Rules”), depending on the needs of this case. For the reasons set forth above, the Court finds that the needs of this case will best be served by ordering this case to arbitration under the following circumstances:

- (1) The arbitration panel shall consist of three mutually acceptable attorneys all of whom are engaged in the practice of construction litigation;
- (2) The arbitration shall be governed by the Georgia Rule of Civil Procedure, and meaningful motion practice is permitted;
- (3) The parties shall have a right to appeal to a second arbitration panel, which panel shall also consist of three attorneys all of whom are engaged in the practice of construction litigation;
- (4) The arbitration panel shall have the authority to award attorneys’ fees and costs under any applicable contractual provision or statute that applies in the litigation of these claims;
- (5) The arbitrators shall address as an initial matter FCSD’s claim regarding whether the retaining walls are appropriately designed and constructed, whether they need to be replaced and the cost thereof;
- (6) Upon the issuance of an interim arbitration award adjudicating these matters, the parties shall resume previously attempted mediation with mediator George Reid following the benefit of a monetary award;

(7) If mediation is unsuccessful, the second phase of arbitration shall address the allocation of liability and associated damages amount for which each party, other than FCSD, if appropriate, will be responsible.

Accordingly, the motion is **GRANTED** and this litigation is **STAYED** pending the outcome of arbitration except as to the December 16, 2013 conclusion of the discovery necessary for arbitration.

SO ORDERED this 28th day of October, 2013.


MELVIN K. WESTMORELAND, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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