KRIEG DEVAULT

Insights

Owners / GCs / Subs / Suppliers / Lessors – Check Your Contracts. Court of Appeals Decision Highlights Challenges when Dispute Resolution Process Varies

August 25, 2022

By: Christopher W. Bloomer

Imagine having to litigate half of a construction dispute in court and the other half in arbitration. The Indiana Court of Appeals recently analyzed that conundrum in *Haddad v. Properplates, Inc.,* No. 21A-PL-2560, 2022 WL 2977362 (Ind. Ct. App. July 28, 2022). In that case, property owners entered into a construction contract with a contractor for a construction project. The contract contained a "one-way" arbitration provision requiring the contractor to submit any disputes it had with the owners to arbitration. However, the contract was silent on the proper venue in which the owners' disputes with the contractor had to be litigated.

The owners subsequently filed a lawsuit against the contractor in state court for breach of contract, breach of warranty, indemnification, and negligence arising out of the construction project. The contractor filed counterclaims against the owners and eventually moved to compel arbitration of *all* claims (*i.e*., the owners' claims *and* the contractor's counterclaims).

Rather than split disposition of the case between court and arbitration, the trial court ordered the arbitration of all disputes between the parties, regardless of whether the claim was raised by the contractor or the owners. But the Court of Appeals reversed on the basis of well-settled law that parties are only bound to arbitrate those issues they have agreed to arbitrate pursuant to the clear and unambiguous terms of their contract. Here, there was nothing in the contract requiring the owners to submit their claims to arbitration. On the other hand, the contract expressly required the contractor to arbitrate its claims against the owners.

Certainly few, if any, parties to a construction contract desire to have interrelated claims concerning the same project, same alleged delays, same alleged warranty claims, and same payment disputes simultaneously litigated in two or more venues. Having interrelated issues decided in two or more venues could mean duplicative filings, duplicative proceedings, and overall confusion caused by potentially inconsistent rulings and outcomes. In addition to the legal expense, there is also a business cost associated with protracted dual-track cases, including the disruption of ongoing litigation for business executives, project managers, and others.

Despite these challenges, many parties to construction agreements either use form templates that have not been reviewed by legal counsel, or fail to recognize the implications of a nuanced arbitration clause like the problematic "one-way" arbitration provision in *Haddad*. However, upfront careful consideration and negotiation of a construction contract could significantly reduce: (1) the potential for and uncertainty of litigation on dual tracks; and (2) the associated cost of what could otherwise be a preventable complication.

If you have any questions concerning this Alert, construction contract drafting, construction industry litigation-avoidance, or other construction-related matters, please contact Christopher W. Bloomer, Blake P. Holler, or David A. Buls.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.