

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FILED

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CARBON COUNTY
PROTHONOTARY

PANTHER VALLEY SCHOOL DISTRICT,
Plaintiff

v.

No. 16-2309

YANUZZI, INC., and
THE ARCHITECTURAL STUDIO,
Defendants

David F. Conn, Esq.

Counsel for Plaintiff

Edward J. McKarski, Esq.

Counsel for Defendant
Yanuzzi, Inc.

Richard J. Davies, Esq.
Cory P. Taylor, Esq.

Counsel for Defendant
The Architectural
Studio

MEMORANDUM OPINION AND ORDER

Matika, J. - June 11, 2019

I. Introduction.

This Memorandum Opinion addresses the November 9, 2018 "Motion for Summary Judgment of Defendant [] The Architectural Studio, LLC for Dismissal of all Claims and Crossclaims" ("The Architectural Studio's Motion for Summary Judgment")

In accordance with the Order that follows this Memorandum Opinion, The Architectural Studio's Motion for Summary Judgment shall be **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND.

A. The Structure of Panther Valley's Complaint.

Plaintiff Panther Valley School District ("Panther Valley") has filed a September 27, 2016 Complaint (the "Complaint") stemming from construction of the new Panther Valley Middle School in or around 2005 / 2006. See generally, Complaint at ¶¶ 5-44.

The Complaint contains two counts for breach of contract. In Count I of the Complaint, denominated "Count I - Breach of Contract - Yanuzzi," Panther Valley contends that Defendant Yanuzzi, Inc. ("Yanuzzi") breached a December 28, 2005 contract between Panther Valley and Yanuzzi pertaining to HVAC construction at the job site (the "December 28, 2005 Panther Valley / Yanuzzi Contract"). See Complaint at ¶¶ 45-50.

In Count II of the Complaint, denominated "Count II - Breach of Contract - The Architectural Studio," Panther Valley contends that The Architectural Studio breached a May 1, 2003 contract between Panther Valley and The Architectural Studio pertaining to architectural design and supervision of the middle school project (the "May 1, 2003 Owner-Architect Agreement"). See Complaint at ¶¶ 45-50.

B. The Nature of this Litigation - The Two Contracts at Issue, and Fuel Oil Storage Tank, and the Two Oil Leaks.

Generally, Panther Valley alleges in the Complaint that it engaged The Architectural Studio, pursuant to the May 1, 2003 Owner-Architect Agreement, to provide design and supervision services with respect to the middle school project. See Complaint at ¶ 6. Panther Valley also alleges that it engaged Yanuzzi, pursuant to the December 28, 2005 Panther Valley / Yanuzzi Contract, to perform HVAC construction for the middle school, including installation of a ten-thousand gallon underground heating oil storage tank manufactured by non-party Containment Solutions, Inc. See Complaint at ¶ 7. See also generally, Complaint.

Panther Valley allege that the storage tank's installation guide indicated the highly critical nature of using pea gravel and crushed stone as backfill for the tank's installation and not to use native soil or sand. See Complaint at ¶¶ 12-16. Panther Valley alleges that Yanuzzi installed the tank in July, 2006 and that Yanuzzi installed double wall underground fuel oil supply and return piping the following month in August, 2006. See Complaint at ¶ 17.

Panther Valley alleges that: in August, 2007, it discovered 6,000 gallons of fuel oil - not in the storage tank - between the

middle school and the high school; this leak did not come from the tank itself; this leak came from a breach of the fuel oil return line around the area where the tank exists; the repair of the fuel line did not implicate the tank or surrounding fill; this leak resulted in subsequent litigation in this Court brought by the entity that cleaned up the spilled oil and which sought to get paid for its efforts; this case, *Pennsy Supply, Inc. d/b/a Slusser Brothers v. Panther Valley School District et al.*, No. 09-2312, settled in February, 2015; and The Architectural Board and Yanuzzi were named defendants in this case along with Panther Valley. See Complaint at ¶¶ 18-22.

Panther Valley further alleges that: on July 27, 2015, Panther Valley experienced a second fuel tank leak - the leak at issue in this matter - wherein approximately 4,000 gallons leaked from the tank; tank manufacturer Containment Solutions, Inc. inspected the tank in August, 2015 and found deflections, bulges, cracks and buckles across the tank; and Geo-Technology Associates, Inc. tested the soil around the tank and found that it contained sand and did not meet Containment Solutions, Inc. backfill installation requirements. See Complaint at ¶¶ 23-28

C. Panther Valley's Breach of Contract Claims.

In Count I of the Complaint, Panther Valley contends that Yanuzzi breached the December 28, 2005 Panther Valley / Yanuzzi

Contract by *inter alia* installing the oil tank improperly and in violation of Containment Solutions, Inc.'s installation instructions, by failing to use the required backfill, and by failing to properly place and set the tank. Panther Valley contends that the use of sand as backfill caused the second fuel oil leak by causing the tank to fail. Panther Valley seeks in excess of \$450,000 in cleanup and monitoring costs. See Complaint at ¶¶ 45-50.

In Count II of the Complaint, Panther Valley contends that The Architectural Studio breached the May 1, 2003 Owner-Architect Agreement by not inspecting Yanuzzi's work, by failing to note the use of inappropriate backfill and breaching its contractual warranty to ensure that the work done for Panther Valley on the middle school project would be free from defects and in accordance with contractual requirements. See Complaint at ¶¶ 51-57.

D. Yanuzzi's Cross-Claim Against The Architectural Studio.

Yanuzzi has cross-claimed against The Architectural Studio to the extent of its liability, if any. See Answer and New Matter on Behalf of Defendant, Yanuzzi, Inc., to Plaintiff's Complaint [New Matter Crossclaim].

E. The Architectural Studio's Motion for Summary Judgment.

In The Architectural Studio's Motion for Summary Judgment, The Architectural Studio sets forth two contentions.

First, The Architectural Studio claims that (a) its May 1, 2003 Owner-Architect Agreement with Panther Valley contains a contractually agreed upon statute of limitations that expired prior to Panther Valley's September 27, 2016 initiation of this lawsuit and that (b) accordingly, Panther Valley's claims against The Architectural Studio must be dismissed as time-barred. See The Architectural Studio's Motion for Summary Judgment at ¶¶ 1-23; 29-39.

Second, The Architectural Studio contends that Yanuzzi's cross-claims against it lack merit insofar as contribution and indemnity do not properly lie in this matter. See The Architectural Studio's Motion for Summary Judgment at ¶¶ 40-49.

II. DISCUSSION.

A. Summary Judgment Standard.

Rule 1035.2 of the Pennsylvania Rules of Civil Procedure, governing motions for summary judgment, states:

Rule 1035.2 Motion

After the relevant pleadings are closed, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of

expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

See Pa.R.C.P. 1035.2.¹ A record that supports summary judgment demonstrates that no dispute exists with respect to material facts or contains insufficient factual evidence to establish a *prima facie* cause of action.

Rule 1035.3(a)(1) of the Pennsylvania Rules of Civil Procedure states in part that "the adverse party may not rest on the mere allegations or denials of the pleadings, but must file a response within thirty days after service of the motion identifying one or more issues of fact arising from evidence in the record

¹ The Note to Rule 1035.2 advises that "Rule 1035.2 sets forth the general principle that a motion for summary judgment is based on an evidentiary record which entitles the moving party to judgment as a matter of law." See Pa.R.C.P. 1035.2, Note. With respect to the first subdivision of Rule 1035.2, the Note counsels that "[u]nder subdivision (1), the record shows that the material facts are undisputed and therefore, there is no issue to submit to a jury." See Pa.R.C.P. 1035.2, Note. Accordingly, "[a]n example of a motion under subdivision (1) is a motion supported by a record containing an admission" and "[b]y virtue of the admission no issue of fact could be established by further discovery or expert report." See Pa.R.C.P. 1035.2, Note.

With respect to the second subdivision of Rule 1035.2, the Note counsels that "[u]nder subdivision (2), the record contains insufficient evidence to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to a jury. See Pa.R.C.P. 1035.2, Note. Accordingly, "[t]he motion in this instance is made by a party who does not have the burden of proof at trial and who does not have access to the evidence to make a record which affirmatively supports the motion" and "[t]o defeat this motion, the adverse party must come forth with evidence showing the existence of facts essential to the cause of action or defense." See Pa.R.C.P. 1035.2, Note.

controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion." See Pa.R.C.P. 1035.3(a)(1). The Pennsylvania Supreme Court has stated that "where a motion for summary judgment has been made and properly supported, parties seeking to avoid the imposition of summary judgment must show by specific facts in their depositions, answers to interrogatories, admissions, or affidavits that there is a genuine issue for trial." *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. 1991).

B. The Statute of Limitations for Panther Valley to Bring a Contract Claim Against The Architectural Studio has Expired and the Discovery Rule Does not Apply.

Section 9.3 of the Owner-Architect Agreement provides that the relevant statute of limitations - in this case, four years for a written contract as set forth at 42 Pa.C.S.A. § 5525 - begins to run no later than either (1) the date of "Substantial Completion," (2) "the date of issuance of the final Certificate for Payment," or (3) in no event "later than the date when the Architect's services are substantially completed." See Owner-Architect Agreement, Exhibit "2" to The Architectural Studio's Motion for Summary Judgment, at § 9.3. The Owner-Architect Agreement, at Section 2.6.5, also both limits the architect's duty to be on-site checking the quality or quantity of work and the limits the architect's responsibility to control construction means, methods,

techniques, and the like. See Owner-Architect Agreement, Exhibit "2" to The Architectural Studio's Motion for Summary Judgment, at § 2.6.5.

The Architectural Studio correctly contends that Panther Valley acknowledges that substantial completion occurred in September, 2007. See The Architectural Studio's Motion for Summary Judgment at ¶ 13 ("The School's 'Corporate' Designee testified that substantial completion would have been around September 2007..."); "Response in Opposition of Plaintiff, Panther Valley School District, to Motion for Summary Judgment of Defendant, The Architectural Studio, for Dismissal of all Claims and Cross-Claims" at ¶ 13 ("It is admitted that Mr. Krajnak so testified...").

The Architectural Studio correctly contends that the statute of limitations against it expired prior to the initiation of this lawsuit. The Court finds that The Architectural Studio substantially completed its services by September 2007 for purposes of the language in Section 9.3 that states "[i]n no event shall such statutes of limitation commence to run any later than when the Architect's services are substantially completed. See Owner-Architect Agreement, Exhibit "2" to The Architectural Studio's Motion for Summary Judgment, at § 9.3.

The Architectural Studio also argues, correctly, that the discovery rule does not apply in this matter. See *Gustine Uniontown Associates, Ltd. ex rel Gustine Uniontown, Inc. v. Anthony Crane Rental, Inc.*, 892 A.2d 830, 833 (Pa.Super. 2006) (Language Section 9.3 abrogates the discovery rule, and held that a Plaintiff who agreed to its terms could "not have reasonably expected that it could apply the discovery rule because those expectations are erased by the clear terms of the contract it executed.").

The Court finds Panther Valley's contention that a genuine issue of material fact exists as to whether fraudulent concealment exists in this matter, so as to toll the statute of limitations, to be without merit. Panther Valley suggests that The Architectural Studio had an affirmative duty to provide to Panther Valley the Installation Instructions and Installation Checklist pertaining to the storage tank and stood mute in the face of such duty. See e.g., "Brief of Plaintiff, Panther Valley School District, in Opposition to the Motion for Summary Judgment of Defendant, the Architectural Studio" at 7-10. The Court finds that undertaking such an analysis of The Architectural Studio's contractual duty to be foreclosed by the expiration of the statute of limitations. The Court accordingly will not engage in a renegade collateral attack upon the statute of limitations.

Based upon the foregoing, Panther Valley's contract claim against The Architectural Studio set forth at Count II of the Complaint is time barred by the applicable four year statute of limitations.

B. Yanuzzi's Cross-Claim for Contribution and Indemnity Barred because the Business Relationship between Panther Valley and The Architectural Studio is Defined by Contract.

The Architectural Studio correctly contends that Yanuzzi's cross-claim for contribution must be dismissed because (a) the right to contribution exists only among tortfeasors and (b) The Architectural Studio and Panther Valley had only an underlying contractual relationship. See *Kemper National P&C Companies v. Smith*, 615 A.2d 372, 380 (Pa.Super. 1992); *Mar-Paul, Inc. v. Jim Thorpe Area School District, et al.*, No. 04-2595 at *6 - 7 (C.C.P. Carbon 2011) (Nanovic, P.J.). The Court follows the guidance of the United States District Court for the Eastern District of Pennsylvania in rejecting Yanuzzi's counter-argument that it has made tort allegations on this matter and that equity may support a shift in liability. See *Richardson v. John F. Kennedy Memorial Hospital*, 838 F.Supp. 979, 990 (E.D.Pa. 1993). See "Memorandum in Support of Motion for Summary Judgment of Defendant The

Architectural Studio, LLC for Dismissal of All Claims and Cross-Claims" at 11.

Accordingly, the Court finds Yanuzzi's cross-claim for contribution and indemnity against The Architectural Studio to be barred.

III. CONCLUSION.

For the foregoing reasons, The Architectural Studio's Motion for Summary Judgment shall be **GRANTED** and the Court enters the accompanying Order of Court of even date herewith.

BY THE COURT:



Joseph J. Matika, J.

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ORDER OF COURT

AND NOW, this 11th day of June, 2019, upon consideration
of

- the November 9, 2018 "Motion for Summary Judgment of
Defendant [] The Architectural Studio, LLC for Dismissal
of all Claims and Cross-Claims,"

- the November 9, 2018 "Memorandum in Support of Motion
for Summary Judgment of Defendant The Architectural
Studio, LLC for Dismissal of All Claims and Cross-
Claims,"

- the December 17, 2018 "Response in Opposition of
Plaintiff, Panther Valley School District, to Motion for
Summary Judgment of Defendant, The Architectural Studio,
for Dismissal of all Claims and Cross-Claims,"

- the December 17, 2018 "Brief of Plaintiff, Panther Valley School District, in Opposition to the Motion for Summary Judgment of Defendant, the Architectural Studio,"

- the December 17, 2018 "Answer of Yanuzzi, Inc., to the Motion for Summary Judgment of Defendant, The Architectural Studio,"

- the December 17, 2018 "Brief on Behalf of Defendant, Yanuzzi, Inc., in Opposition to Motion for Summary Judgment of Defendant, The Architectural Studio,"

upon consideration of the January 3, 2019 oral argument thereon, and upon comprehensive review of this matter, it is hereby **ORDERED and DECREED** that the "Motion for Summary Judgment of Defendant [] The Architectural Studio, LLC for Dismissal of all Claims and Crossclaims" is **GRANTED**.

1. Count II of the September 27, 2016 Complaint filed in this matter by Panther Valley School District, denominated "Count II - Breach of Contract - The Architectural Studio," is **DISMISSED** with prejudice;

2. The New Matter Crossclaim contained in the January 17, 2017 "Answer and New Matter on Behalf of Defendant, Yanuzzi, Inc., to Plaintiff's Complaint" is **DISMISSED** with prejudice.

BY THE COURT:



Joseph J. Matika, J.