

SUPERIOR COURT OF PENNSYLVANIA

Gito, Inc. v. Axis Architecture, P.C.

2021 PA Super 241 · No. 225 WDA 2021; J-A25031-21 · Decided December 10, 2021

SUMMARY

The Pennsylvania Superior Court held that a contractual clause prohibiting assignment of an agreement did not bar assignment of a post-performance claim for breach-of-contract damages. The court concluded that Greater Latrobe School District's assignment of its claims to Gito, Inc. was effective because it did not delegate the School District's contractual duties or performance. The court reversed the order sustaining preliminary objections and dismissing the action, and remanded for further proceedings.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Colins, J.; Kunselman, J.; King, J.
JURISDICTION	Pennsylvania
DECIDED	December 10, 2021
DOCKET	225 WDA 2021; J-A25031-21
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order sustaining preliminary objections and dismissing with prejudice a breach-of-contract damages action on the ground that a contractual anti-assignment clause barred assignment of the school district's claims.
STANDARD OF REVIEW	Review of the propriety of sustaining preliminary objections and contract interpretation is plenary and de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Superior Court of Pennsylvania; announces a rule of Pennsylvania contract law.
PARTIES	Gito, Inc. d/b/a Nello Construction, as assignee of the claims of the Greater Latrobe School District v. Axis Architecture, P.C.

TOPICS

assignment and delegation

breach of contract

contract interpretation

construction law

appellate procedure

PRACTICE AREAS

contracts

construction law

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether Article 9.5, which prohibited assignment of the architectural agreement without written consent, barred the School District's post-performance assignment to Gito of its claim for damages arising from Axis's alleged breach.
2. Whether the assignment was ineffective because permitting it could create a risk of duplicative recovery.

HOLDINGS

1. Under Pennsylvania law, a contractual clause that prohibits only assignment of the contract or agreement does not bar assignment of a post-performance claim for damages. Article 9.5 therefore did not invalidate the School District's assignment of its breach-of-contract claim to Gito.
2. The possibility of overlapping damages in the assignee's assigned claim and its separate claim did not make the assignment invalid. Any risk of duplicative recovery could be addressed through consolidation or coordination of the actions.

KEY QUOTATIONS

“We find the above decisions and the Restatement (Second) of Contracts § 322 persuasive and hold that under Pennsylvania law a contractual clause that prohibits only assignment of the contract or assignment of the agreement does not bar assignment of a post-performance claim for damages.” (at 12)

“The courts in these jurisdictions have persuasively explained that the purpose of a general anti-assignment clause is to prevent a party from assigning its performance of the contract to a third-party without the consent of the other party and that assignment of a claim for damages is entirely different from assignment of performance and does not implicate the purpose of the anti-assignment clause.” (at 10)

FACTUAL BACKGROUND

The Greater Latrobe School District contracted with Axis Architecture to provide design and architectural services for construction of an elementary school. The project was substantially completed several months late, and Gito, the general trades prime contractor, pursued delay-related claims against the School District. In a February 2020 settlement, the School District assigned Gito its claims against Axis and the project's construction manager for losses caused by the delayed completion. The assignment occurred after the architectural contract had been fully performed and concerned damages claims rather than delegation of contractual performance.

PROCEDURAL HISTORY

The Greater Latrobe School District assigned to Gito, Inc. its claims against Axis Architecture arising from alleged design and construction delays. Gito filed a breach-of-contract action as assignee. The Westmoreland County Court of Common Pleas sustained Axis's preliminary objection and dismissed the action with prejudice, concluding that the contract's anti-assignment provision invalidated the assignment. The Superior Court reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order sustaining Axis Architecture's preliminary objection and remand for further proceedings. Jurisdiction relinquished.

CASES CITED

- Hospital & Healthsystem Association of Pennsylvania v. Department of Public Welfare, 888 A.2d 601 (Pa. 2005)
- Rosiecki v. Rosiecki, 231 A.3d 928 (Pa. Super. 2020)
- Nolan v. J. & M. Doyle Co., 13 A.2d 59 (Pa. 1940)
- Concrete Form Co. v. W. T. Grange Const. Co., 181 A. 589 (Pa. 1935)
- Pennsylvania Co. for Insurances on Lives & Granting Annuities v. Lebanon Building & Loan Ass'n, 10 A.2d 418 (Pa. 1940)
- Fran & John's Doylestown Auto Center, Inc. v. Allstate Insurance Co., 638 A.2d 1023 (Pa. Super. 1994)
- Egger v. Gulf Insurance Co., 903 A.2d 1219 (Pa. 2006)
- Chiropractic Nutritional Associates, Inc. v. Empire Blue Cross & Blue Shield, 669 A.2d 975 (Pa. Super. 1995)
- CGU Life Insurance Co. of America v. Metropolitan Mortgage & Securities Co., 131 F. Supp. 2d 670 (E.D. Pa. 2001)
- In re Greenly, 481 B.R. 299 (Bankr. E.D. Pa. 2012)
- Amico v. Radius Communications, 2001 WL 1807391 (C.P. Phila. Co. Oct. 29, 2001)
- Newell v. Montana West, Inc., 154 A.3d 819 (Pa. Super. 2017)
- Holland v. United States, 74 Fed. Cl. 225 (2006)
- Missouri Bank & Trust Co. v. Gas-Mart Development Co., 130 P.3d 128 (Kan. App. 2006)
- Folgers Architects Ltd. v. Kerns, 633 N.W.2d 114 (Neb. 2001)
- Korte Construction Co. v. Deaconess Manor Association, 927 S.W.2d 395 (Mo. App. 1996)
- Berschauer/Phillips Construction Co. v. Seattle School District, 881 P.2d 986 (Wash. 1994)
- Ford v. Robertson, 739 S.W.2d 3 (Tenn. App. 1987)
- Cordis Corp. v. Sonics International, Inc., 427 So.2d 782 (Fla. App. 1983)
- Fuller v. Favorite Theaters Co., 230 P.2d 335 (Utah 1951)
- Omicron Safety & Risk Technologies, Inc. v. UChicago Argonne, LLC, 181 F. Supp. 3d 508 (N.D. Ill. 2015)