COURT OF APPEALS OF NEW YORK

Welsbach Electric Corp. v. MasTec North America, Inc.

7 N.Y.3d 624, 859 N.E.2d 498, 825 N.Y.S.2d 692 (2006) · Decided November 20, 2006

SUMMARY

The New York Court of Appeals held that Florida law governed the parties' construction subcontract under its choice-of-law provision. Although New York public policy invalidated pay-if-paid provisions under Lien Law § 34, that policy was not sufficiently fundamental to override the parties' choice of Florida law, which enforced the provision.

CASE DETAILS

COURT	Court of Appeals of New York
WRITING FOR THE COURT	Rosenblatt, J.; Kaye, C.J.; Ciparick, J.; Graffeo, J.; Read, J.; Smith, J.; Pigott, J.
JURISDICTION	New York
DECIDED	November 20, 2006
DISPOSITION	reversed
PROCEDURAL POSTURE	Welsbach appealed from an order striking MasTec's affirmative defenses based on Florida law and the subcontract's pay-if-paid provision. The Appellate Division affirmed, and the New York Court of Appeals granted review and reversed.
STANDARD OF REVIEW	Review of the choice-of-law determination and the order striking affirmative defenses; the court independently determined whether New York's public-policy exception invalidated the parties' contractual choice of Florida law.
PRECEDENTIAL VALUE	Binding New York Court of Appeals precedent
PARTIES	MasTec North America, Inc. v. Welsbach Electric Corp.

TOPICS

construction law · contracts · statutory interpretation · interstate disputes · commercial litigation

PRACTICE AREAS

construction law · contracts · commercial litigation · conflict of laws

QUESTIONS PRESENTED

1. Whether the parties' contractual choice of Florida law should be enforced when Florida law permits pay-if-paid provisions that New York law would invalidate under Lien Law § 34.
2. Whether New York's public policy against pay-if-paid provisions is sufficiently fundamental to override the parties' choice of Florida law.

HOLDINGS

1. New York courts generally enforce a contractual choice-of-law clause when the chosen law bears a reasonable relationship to the parties or transaction, unless application of the chosen law violates a fundamental New York public policy.
2. New York's public policy against pay-if-paid clauses is not sufficiently fundamental to override the parties' choice of Florida law in this dispute.

KEY QUOTATIONS

> *“We hold that it is not, and that the parties' choice of law controls.”* (627)

> *“Crucially, however, we have reserved the public policy exception "for those foreign laws that are truly obnoxious"”* (629)

> *“In short, Welsbach has not sustained its "heavy burden" of proving that application of Florida law would be offensive to a fundamental public policy of this State”* (632)

FACTUAL BACKGROUND

MasTec, a Florida corporation, contracted to construct a fiber-optic telecommunications network and subcontracted the electrical work to Welsbach, a Delaware corporation. Their subcontract contained a pay-if-paid clause making MasTec's payment obligation contingent on receipt of payment from the owner and selected Florida law. After the owner became insolvent and terminated its contract with MasTec, neither MasTec nor Welsbach was fully paid, and Welsbach sued MasTec for the unpaid balance.

PROCEDURAL HISTORY

Welsbach sued MasTec for unpaid subcontract balances after the project owner became insolvent and terminated its contract with MasTec. Supreme Court struck MasTec's fifth and eleventh affirmative defenses, which asserted that Florida law governed and that payment from the owner was a condition precedent to MasTec's obligation to pay Welsbach, but otherwise denied Welsbach's motion and granted MasTec leave to amend its answer. The Appellate Division affirmed the striking of the defenses, with one Justice dissenting. The Court of Appeals reversed and answered the certified question in the negative.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order of the Appellate Division was reversed with costs. Welsbach's motion to dismiss MasTec's fifth and eleventh affirmative defenses was denied, and the certified question was answered in the negative.

CASES CITED

- West-Fair Elec. Contrs. v. Aetna Cas. & Sur. Co., 87 N.Y.2d 148 (1995)
- Cooney v. Osgood Mach., 81 N.Y.2d 66 (1993)
- Greenfield v. Philles Records, 98 N.Y.2d 562 (2002)
- R/S Assoc. v. New York Job Dev. Auth., 98 N.Y.2d 29 (2002)
- W.W.W. Assoc. v. Giancontieri, 77 N.Y.2d 157 (1990)
- Vermont Teddy Bear Co. v. 538 Madison Realty Co., 1 N.Y.3d 470 (2004)
- Reiss v. Financial Performance Corp., 97 N.Y.2d 195 (2001)
- Loucks v. Standard Oil Co. of N.Y., 224 N.Y. 99 (1918)
- Scheiber v. St. John's Univ., 84 N.Y.2d 120 (1994)
- Sanders v. Winship, 57 N.Y.2d 391 (1982)
- Matter of Board of Higher Educ. of City of N.Y. v. Carter, 14 N.Y.2d 138 (1964)
- Birmingham Iron Foundry v. Glen Cove Starch Mfg. Co., 78 N.Y. 30 (1879)
- Cummings v. Broadway-94th St. Realty Co., 233 N.Y. 407 (1922)
- Embury v. Conner, 3 N.Y. 511 (1850)
- Buel v. Trustees of Village of Lockport, 3 N.Y. 197 (1849)
- Schuler-Haas Elec. Corp. v. Aetna Cas. & Sur. Co., 40 N.Y.2d 883 (1976)
- West-Fair Elec. Contrs. v. Aetna Cas. & Sur. Co., 49 F.3d 48 (2d Cir. 1995)
- Balbuena v. IDR Realty LLC, 6 N.Y.3d 338 (2006)
- Szerdahelyi v. Harris, 67 N.Y.2d 42 (1986)
- Wm. R. Clarke Corp. v. Safeco Ins. Co., 15 Cal. 4th 882, 938 P.2d 372 (1997)