

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

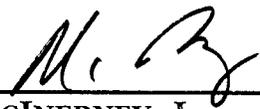
KNIGHT BROS., INC.	:	Feb. 2014
	:	January Term, 2015
	:	
Plaintiff	:	Case No. 02673
	:	92
v.	:	
	:	Commerce Program
	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY	:	
	:	Control Nos.
Defendant	:	15050747, 15061150.

ORDER

AND NOW, this 16th day of July, 2015, upon consideration of the motion for partial summary judgment of defendant, Southeastern Pennsylvania Transportation Authority, the motion to amend complaint of plaintiff, Knight Bros., Inc., the respective responses in opposition, and defendant's reply in further support of its motion for partial summary judgment, it is **ORDERED** as follows:

- I. Defendant's motion for partial summary judgment is **DENIED**.
- II. Plaintiff's motion to amend complaint is **GRANTED**.

BY THE COURT,



MCINERNEY, J.

DOCKETED

JUL 16 2015

R. POSTELL
COMMERCE PROGRAM

Knight Bros., Inc. Vs S-ORDOP



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<i>Defendant</i>	:	15050747, 15061150.

MEMORANDUM OPINION

Before the court are defendant’s motion for partial summary judgment and plaintiff’s motion to amend complaint. Defendant’s motion for partial summary judgment asks this court to rule that a contract between plaintiff and defendant did not give plaintiff the exclusive right to perform certain emergency snow removal services on behalf of defendant. For the reasons below, the motion for partial summary judgment is denied, and the motion to amend complaint is granted.

BACKGROUND

Plaintiff, “KBI,” is a company engaged in the snow-removal business. Defendant “SEPTA,” a Pennsylvania authority, owns and operates a mass-transportation system. In wintertime, SEPTA requires routine and emergency snow-and-ice removal services at its rails stations, platforms, parking lots, sidewalks and other areas subjected to commuter traffic. To obtain such services, SEPTA invites interested businesses to bid for the contractual right to perform such work along specific segments of SEPTA’s mass-transportation lines.

On November 29, 2006 KBI and SEPTA entered into a five-year contract whereby KBI agreed to perform snow-removal work on specific segments of SEPTA's mass-transportation lines.¹ Other successful bidders won similar contractual rights to perform similar work along different segments of SEPTA's mass-transportation lines. After the five-year contract expired at the close of winter, 2011, KBI and SEPTA entered into a second five-year contract which was executed on January 12, 2012.²

The instant action was commenced on February 3, 2014; subsequently, on July 6, 2014, KBI filed a seven-count complaint against SEPTA. The complaint alleges that SEPTA breached the two five-year contracts by hiring other entities to perform work which KBI alone was entitled to discharge. Count VII thereof avers in particular that SEPTA breached the second five-year contract by allowing other entities to perform emergency snow-and-ice removal work in those segments of SEPTA's mass-transportation lines which had been contractually awarded to KBI. On May 6, 2015, SEPTA filed the instant motion for partial summary judgment. The motion asks the court to dismiss only Count VII of the complaint. SEPTA argues that Count VII should be dismissed because in the event of an emergency, SEPTA was contractually entitled to request any contractor other than KBI to clear snow and ice accumulations anywhere along its Regional Rail System, including the segments awarded to KBI for routine work.³

¹ Complaint, Exhibit 1.

² Contract, Exhibit A to SEPTA's response in opposition to KBI's motion to amend complaint. The contract contemplated two types of work to be performed by KBI: routine work such as snow removal, and emergency work which included snow-and-ice removal.

³ *Memorandum of Law* is support of SEPTA's motion for partial summary judgment, ¶ II.—Statement of Question Involved.

DISCUSSION

The standards for summary judgment are well settled:

the Pennsylvania Rules of Civil Procedure provide in relevant part, that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Under the rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to judgment as a matter of law. In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.⁴

Moreover,

The task of interpreting a contract is generally a question of law to be decided by a court rather than a jury.⁵

The goal of that task is, of course, to ascertain the intent of the parties as manifested by the language of the written instrument.⁶

Under the rule of *contra proferentem*, any ambiguous language in a contract is construed against the drafter and in favor of the other party if the latter's interpretation is reasonable.⁷

Where ... the language of the contract is clear and unambiguous, a court is required to give effect to that language.⁸

According to the motion for partial summary judgment, SEPTA, in an emergency, was entitled to hire other contractors to remove snow or ice along the segments awarded

⁴ Ario v. Ingram Micro, Inc., 600 Pa. 305, 315, 965 A.2d 1194, 1199-2002 (Pa. 2009).

⁵ O'Boyle v. J.C.A. Corp., 538 A.2d 915, 917 (Pa. Super. 1988) (footnote 2).

⁶ Madison Const. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 606, 735 A.2d 100, 106 (1999).

⁷ Sun Co. (R&M) v. Pennsylvania Tpk. Comm'n, 708 A.2d 875, 878-79 (Pa. Commw. 1998).

⁸ Madison Const. Co. v. Harleysville Mut. Ins. Co., 557 Pa. at 606, 735 A.2d at 106 (1999).

to KBI. In support of this position, SEPTA specifically points to two provisions in its second five-year contract with KBI. Those provision state as follows:

2011—2016 Snow Removal Specification

5.2 EMERGENCY SERVICES—PARKING LOTS

At the time of bid, submitting contractor shall furnish a combined hourly rate for equipment and personnel to remove snow from SEPTA parking lots.... Emergency services will be called for at the discretion of SEPTA's Project Manager.... **The contractor may be called upon to remove snow at any location with the Regional Rail System....**⁹

5.3 EMERGENCY SERVICES—STATIONS

At the time of the bid submittal contractor shall furnish SEPTA an hourly rate for emergency services.... Emergency services may be called for when icing or snow is localized and only portions of lines or stations are affected. **Contractor may be called upon to remove snow or ice at any location within the Regional Railroad System.**¹⁰

A straightforward reading of sections 5.2 and 5.3 shows that **in an emergency**, SEPTA, at its discretion, could rely on contractors other than KBI to clear snow or ice anywhere along the Regional Rail System, including any segments contractually awarded to KBI for routine work. In other words, the two provisions empowered SEPTA to rely upon other contractors in the event of an emergency. In this case, however, SEPTA has offered no evidence showing that its reliance on other contractors was triggered by an emergency. For example, SEPTA has failed to attach any record showing

⁹ 2011—2016 Snow Removal Specification, § 5.2, p. 12, attached as Exhibit A to the motion for partial summary judgment of SEPTA (emphasis supplied).

¹⁰ *Id.* § 5.3 (emphasis supplied).

whether specific temperatures, precipitations, or other weather-related events triggered the need for emergency work. SEPTA should have offered such type of evidence because SEPTA alone had the contractual power to order commencement of snow-removal operations, whether based on a routine or emergency basis.¹¹ Lack of this type of evidence creates a question of fact as to whether SEPTA properly invoked its contractual right to task other contractors in response to an emergency.¹²

The motion for partial summary judgment is denied. KBI's motion to amend complaint is granted.¹³

BY THE COURT,



MCINERNEY, J.

¹¹ Contract, 2011–2016: SNOW REMOVING SPECIFICATIONS, Section 3.2.1—Station Clearing Time, Exhibit A to the motion for partial summary judgment of SEPTA.

¹² There is another question of fact that precludes summary judgment in favor of SEPTA. First, the court notes that sections 5.2 and 5.3 begin respectively with the following introductory phrases: “[a]t the time of bid” and “[a]t the time of bid submittal.” Second, the court notes that both sections state the following: “[t]he contractor (or [c]ontractor) may be called upon to remove snow (or snow or ice) at any location within the Regional Railroad System.” A straightforward reading of these terms leads the court to conclude that only those bidders that secured a contract with SEPTA could be asked to perform emergency snow-and-ice removal work anywhere along SEPTA's Regional Rail System. In this case, however, SEPTA has provided no evidence showing that it relied exclusively upon such successful bidders to discharge the required emergency snow-and-ice removal work. Thus, a second question of fact prevents this court from granting SEPTA's motion for partial summary judgment.

¹³ “A party either by filed consent of the adverse party or by leave of court, may at any time ... amend the pleading.” Pa. R.C.P. 1033. “The decision to permit an amendment to pleadings is committed to the sound discretion of the trial judge.” *Gallo v. Yamaha Motor Corp., U.S.A.*, 335 Pa. Super. 311, 313, 484 A.2d 148, 150 (Pa. Super. 1984). In this case, KBI seeks to amend its complaint on grounds that discovery unearthed evidence of additional breaches allegedly committed by SEPTA under Count VII of the complaint. For this reason, the motion to amend complaint is granted.