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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, L.P.,	.	
<i>et al.</i> ,	.	(Jointly Administered)
	.	
Debtors.	.	
.	
WELDED CONSTRUCTION, L.P.,	.	Adversary Proceeding
	.	No. 19-50194 (LSS)
Plaintiff,	.	
	.	
v.	.	
	.	
THE WILLIAMS COMPANIES, INC.,	.	
WILLIAMS PARTNERS OPERATING	.	Courtroom 2
LLC, and TRANSCONTINENTAL GAS	.	824 Market Street
PIPE LINE COMPNAY, LLC,	.	Wilmington, Delaware 19801
	.	
Defendants.	.	Friday, July 7, 2023
.	2:03 p.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF BANKRUPTCY JUDGE

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1 (Proceedings commenced at 2:03 p.m.)

2 THE COURT: Good afternoon. This is Judge
3 Silverstein. Thank you all for getting together so quickly.
4 We're in Welded Construction, the adversary 19-50194.

5 And I asked counsel to get together after I
6 received the hand-delivery this morning, with respect to the
7 contract that I requested a copy of and, in particular, I
8 noted in the cover letter that it says:

9 "The enclosed contract does not include the
10 October 2017 pre-job conference agreements, referencing
11 Section 8, Article 2(a), because the parties do not agree
12 whether they should be included."

13 So I'm going to resolve that right now because I
14 want an entire agreement in front of me. It's unfortunate, I
15 had this week, time this week to spend on this matter and I
16 didn't have the whole contract. So I want to have the whole
17 contract.

18 So let's look at this section and parties can tell
19 me why they think it's part of the contract and why they
20 think it's not part of the contract. And I guess I'll start
21 with Welded.

22 MR. BUCHANAN: Sure, Your Honor. I'm just pulling
23 it up now.

24 Your Honor, in Article -- Section 8, Article 2(a)
25 of the contract, the definitions section, the definition of

1 "NPLA" means the agreements themselves and the definition
2 goes on to say that reference to the NPLA also includes any
3 written amendments thereto, and/or project-specific written
4 agreements between contractor and the aforementioned unions,
5 which result from a pre-job conference.

6 And then the definition of "pre-job conference"
7 means the conference which takes place between the contractor
8 and the representatives of the unions that are party to the
9 NPLA before work on a (indiscernible) begins. The purpose of
10 such conference is to reach agreements on additional, nominal
11 project-specific benefits for NPLA personnel.

12 So, from Welded's perspective, if the Court is
13 considering the NPLAs, which are incorporated by reference
14 into the contract, the pre-job conference agreements, which
15 are part of the NPLAs, by definition, in the contract were
16 relevant.

17 THE COURT: Okay. So I take it Welded believes
18 that those pre-job conference agreements are part of the
19 contract by virtue of running me through these definitions?

20 MR. BUCHANAN: Yes, Your Honor. We think they're
21 part of the defined term NPLA (indiscernible).

22 THE COURT: Okay. Let me hear from Transco as to
23 why they're not part of the agreement.

24 MS. EWALD: Yes, Your Honor. Good afternoon.
25 This is Shelly Ewald.

1 Can you hear me okay?

2 THE COURT: Yes, I can. Thank you.

3 MS. EWALD: Thank you, Your Honor.

4 We would direct the Court's attention to it is

5 Article, Roman numeral Section VIII, the page number is

6 Section 8-10. It is Subsection (h), as in Harry,

7 Miscellaneous, and it states:

8 The current NPLA is incorporated hereto in its
9 entirety as set forth in Exhibit 3. It goes to say the list
10 of benefits which may apply to personnel, who are paid
11 pursuant to the NPLA, are defined and set forth in Exhibit 4.
12 Company shall have the right to review any pre-job conference
13 agreement.

14 And for two reasons, Transco maintains that the
15 pre-job conferences are not incorporated into the contract
16 because those pre-job conferences did not exist. They were
17 not the current NPLA, as described in Section (h), because
18 they were created a little over a year later than the
19 contract was executed. And while we don't disagree that they
20 may be relevant documents, ultimately, they were not
21 incorporated into the contract; only the current NPLA was
22 incorporated into the contract.

23 My second submission, Your Honor, is that
24 Section (h) goes on to state that, Company shall have the
25 right to review any pre-job conference agreement. We have no

1 record of receipt -- and I'm saying "we," Your Honor, I
2 apologize -- the defendant, Transcontinental Gas Pipe Line
3 Company has no record of receipt of a pre-job conference
4 agreements prior to the declaration of bankruptcy. So it was
5 sometime after October 22nd, 2018, that we have the first
6 record of Transco receiving the pre-conference agreements.

7 So, for those two reasons, one, which is the face
8 of the contract identifies what was going to be incorporated
9 as the current NPLA, which this, obviously, can't include
10 documents that were not in existence and, number two, the
11 contract was not adhered to with regard to the right to
12 review the pre-job conference agreements.

13 THE COURT: Okay. Ms. Ewald, you said that the
14 pre-job conference agreements may be relevant, even if they
15 aren't incorporated into the agreement. Do you think they
16 are documents that I need to have in front of me to decide
17 the summary judgment motions?

18 MS. EWALD: I don't believe they are referenced in
19 the -- I know they're not referenced in Transco's motions for
20 summary judgment, Your Honor. I do not know if they were
21 referenced in the Welded motions for summary judgment and I
22 would say our opposition to the Welded summary judgment
23 regarding the contract interpretation issues, to the extent
24 they would be referenced, I believe that we -- I believe that
25 other provisions of the contract control, but I don't think

1 they were addressed specifically.

2 THE COURT: I --

3 MS. EWALD: I have no problem, Your Honor, with
4 providing you those pre-job conference agreements, just with
5 the understanding from the Defendants' side that they were,
6 in our view, not incorporated in the contract, not provided
7 as per the contract.

8 THE COURT: Okay. Yeah, I don't recall these pre-
9 job conference agreements being specifically referenced in
10 the briefs. I could be wrong. But we are talking about,
11 very specifically, have disputes over labor costs in
12 relationship to the equipment fee. And so -- and the
13 definition of "labor costs" references actual wages, rates,
14 and benefits paid to -- well, it may not refer to the
15 agreement; maybe it just refers to NPLA personnel. Pursuant
16 to the NPLA -- yes, it does.

17 So, if I'm working through the definition of
18 "labor costs" related to the arguments with respect to the
19 equipment fees, my concern is, Do I need these other
20 documents, even if they aren't incorporated into it? That
21 definition could suggest that I need to reference them.

22 Do you have a thought on that or am I missing
23 something there?

24 MS. EWALD: No, Your Honor, I think you're
25 certainly following the contract here. I think that there

1 are provisions of the agreement; for example, there is
2 included equipment that would be part of what Welded was to
3 provide for the 50 percent uplift. That, if there is a
4 contradiction between the included equipment list and what
5 later appeared on a pre-job conference agreement, that could
6 be something that, ultimately, is an issue for the Court to
7 determine.

8 So I think it's perfectly appropriate to provide
9 you with those agreements and I'm certainly happy to do so,
10 just with the caveat that I do not -- it is our position that
11 they were not incorporated into the contract or provided for
12 review, as required by the contract.

13 THE COURT: Okay. Thank you.

14 Mr. Buchanan, Ms. Ewald has stated she has no
15 objection from Transco's point of view of forwarding those
16 pre-job conference agreements to the Court. So I'm going to
17 suggest that we do that.

18 My preliminary thought, based on the provision
19 that Ms. Ewald pointed me to about incorporation, and I
20 wondered where those agreements might be incorporated,
21 suggest to me that those pre-job conference agreements may
22 not be a part of the contract, where the current NPLA,
23 current as of the date of the execution of the agreement is.

24 But I'm not sure that I have to resolve that at
25 the moment if, as long as I have them in front of me, so that

1 if it's necessary, I can reference them.

2 Do you have any thoughts with respect to that?

3 MR. BUCHANAN: No, Your Honor. I would probably
4 agree with that.

5 THE COURT: Okay. Let me ask another question,
6 then, in terms of what's part of the agreement.

7 There were three, I believe, post-petition orders
8 that were entered with agreements attached to them that the
9 Court approved and that are part of the exhibits that I
10 received and are referenced in certain arguments, and I'm
11 forgetting which ones offhand. But do parties have positions
12 as to whether they're part of the agreement or not?

13 And if you don't, that's fine, because I'm hitting
14 you cold, but I'm trying to get a sense of this to see what
15 parties think forms the agreement that's at issue.

16 MS. EWALD: Your Honor, this is Shelly Ewald for
17 the Defendant. I think you may be referring Transco's motion
18 for summary judgment in which Transco is seeking
19 determination of the propriety of the post-petition costs for
20 included equipment that was charged as a direct line item --

21 THE COURT: Yes.

22 MS. EWALD: -- in an amount of about \$2.3 million.

23 THE COURT: Yes.

24 MS. EWALD: And I appreciate being hit cold, but
25 this is my view of it, and I think it comports with the

1 letter agreements that are attached, each and every one of
2 those letter agreements referred to the ASR contract. So it
3 is Transco's position that the post-petition commitment
4 letters were to be treated consistent with the terms in the
5 ASR contract. That the contract terms for compensation had
6 not changed, thus, to the extent that Welded was -- Welded
7 provided an invoice for the amounts expended, that it would
8 be the labor costs, as defined by the contract, and then the
9 equipment multiplier of 50 percent. And there was no
10 amendment to the contract to change that; however, what
11 Welded invoiced for were the actual costs of the equipment in
12 that post-petition time frame, which exceeded the equipment
13 multiplier by the \$2.3 million that we have -- that we are
14 seeking summary judgment for.

15 So our position is the contract remained the same.
16 The contract was referenced and incorporated into the
17 commitment letters and the compensation scheme remained the
18 same. We also, I believe, attached exhibits to our motion in
19 this regard between the parties that also confirmed the
20 definition that included equipment would remain the same.

21 THE COURT: Yeah, I recall that. It's an
22 interesting question about whether these orders are part of
23 the agreement, amended the agreement, what they did.
24 Something I'll have to resolve.

25 Mr. Buchanan?

1 MR. BUCHANAN: Your Honor, I would just -- sorry,
2 I would just note that Welded's position is that they were
3 not part of the agreement; they were separate agreements for
4 continuing the same work that was done under the contract,
5 but under a different contractual arrangement that was
6 necessitated by the fact that the debtor was not in
7 bankruptcy and needed to track its work in a different way.

8 I believe we explained our position in our
9 response to Transco's motion for summary judgment on this
10 count, but it's Welded's position that those agreements are
11 not part of the contract; they're separate agreements, which
12 is why the Court blessed them separately.

13 THE COURT: Okay. Is there any other document out
14 there that some party would say is part of the agreement that
15 I don't have in front of me?

16 MR. BUCHANAN: I don't believe so, Your Honor, as
17 I sit here.

18 THE COURT: Thank you.

19 Ms. Ewald?

20 MS. EWALD: Your Honor, I'd agree with that. I
21 think that's accurate.

22 THE COURT: Okay. As you can see, we're working
23 on this. As I said, I had time this week. I really don't
24 have much time next week to work on these. We're doing the
25 best we can to get through these.

1 I will say an initial thought is that I won't be
2 granting summary judgment on much. So in terms of your
3 preparation, that's where my thoughts are now -- for either
4 party -- that's where my thoughts are now. It could change.
5 It may change over the next couple of weeks, but based on
6 sort of our preliminary thoughts, I doubt it.

7 I recognize the choice of law provision is hanging
8 out there. I'm not sure it makes much of a difference in the
9 trial as I'm understanding the contractual disputes. I could
10 be wrong.

11 But let me make an observation from when I started
12 to read this contract and that is that the contract itself
13 states where Transco's principal place of business is, and it
14 says it's in Houston, Texas, and I don't recall that any
15 parties made those arguments, but it's right on the first
16 page of the contract; in fact, it's part of the defined term
17 "the Company." So I'll be considering that as I look at this
18 argument, that I should accept a choice of law provision in
19 the contract and maybe I should accept what the parties say
20 was Transco's principal place of business. So, I throw that
21 out there so that people know that that's something I have
22 read and am thinking about.

23 I have one other question that maybe somebody can
24 help me with, and I think I had this right. You can correct
25 me if I'm wrong. There is a reference to the Reilly

1 (phonetic) declaration -- what's his first name? Do we
2 remember? Mr. Reilly's declaration. It is in Transco's --
3 but it's Transco's motion for summary judgment. It's on
4 Transco's motion for summary judgment. I actually think it's
5 in the opening brief and there's a reference to a declaration
6 by Mr. Reilly that's being filed with the brief.

7 We can't find that declaration. We can't find it
8 on the docket. We didn't see it in our binders that came
9 over. So we just want to know if -- I think it's Transco
10 would have filed it -- if you can let Ms. Johnson know where
11 it is, because we're missing it, that would be helpful.

12 Can you double-check me on that, Ethan? Can
13 you -- do you have --

14 THE CLERK: I'm seeing it's in their reply.

15 THE COURT: Oh, you're seeing it in their reply in
16 where? In a footnote?

17 THE CLERK: Yeah, Footnote 27.

18 THE COURT: Footnote 27 of the reply on Transco's
19 motion for summary judgment?

20 THE CLERK: And it's Robert E. Reilly.

21 THE COURT: Robert E. Reilly.

22 And we may just be missing it, but we're not
23 finding it.

24 MS. EWALD: Your Honor, I apologize. That was
25 Transco's reply brief?

1 THE COURT: Yes --

2 MS. EWALD: I apologize.

3 THE COURT: -- on Transco's motion for summary
4 judgment. And we may be missing it, so I didn't want to
5 spend -- since I had you here today, I didn't want to spend
6 too much more time looking for it if you can find it more
7 quickly and let chambers know.

8 MS. EWALD: Certainly, Your Honor.

9 THE COURT: Thank you.

10 Okay. Thank you for gathering today. What I
11 would like is whoever has, whoever wants to send over to me,
12 then -- I lost the term here -- the letter agreements we were
13 talking about. And I'm not sure, as I said, that I have to
14 make a decision at this time whether they're part or they're
15 not part of the contract. As long as I have them, so as
16 we're going through this, if I need to refer to them, I can.
17 And that's it.

18 Does counsel have any questions for me?

19 MS. EWALD: Your Honor, this is counsel for
20 Transco. We have no questions.

21 Thank you for asking and clarifying for us.

22 THE COURT: Thank you.

23 Mr. Buchanan?

24 MR. BUCHANAN: Yes, Your Honor. I would just
25 note, would you like those agreements sent to chambers or

1 docketed or do you have a preference?

2 THE COURT: I think -- oh, I should ask about
3 that -- but I think, yes, I'd like a set sent to chambers,
4 but yes, I'd like them docketed, as well. I'm old school in
5 looking through paper. My clerks are current and they do
6 things on the computer, so thank you.

7 I assume the parties will be working through
8 issues with respect to redactions and sealed documents, as I
9 requested. I know that could take some time, so I wanted to
10 give you a heads-up on that issue.

11 If there are any specific concerns that parties
12 have as they're working through that, please reach out to
13 chambers and we can set up a conference call if it would be
14 helpful to resolve any issues.

15 MR. BUCHANAN: Thank you, Your Honor.

16 Yes, we're certainly aware of all of that. And I
17 guess one thing I would note at this point is that Your Honor
18 had requested a copy of the contract we provided to chambers
19 to be docketed. I know a lot of that is currently designated
20 as "confidential," so I guess it's a question for the Court,
21 whether we'd be filing that under seal and then we'll kind of
22 work at it from there?

23 THE COURT: Yes, you can file it under seal for
24 the moment and that way my clerk will be able to get to it, I
25 think. Yeah?

1 THE CLERK: (Inaudible.)

2 THE COURT: Okay. But then, please, work that
3 through with respect to whether there's a reason that all or
4 any portion of it should remain under seal, recognizing that
5 I'm not going to close this courtroom and I'm not going to
6 have, certainly, a whole opinion under seal. I've never
7 actually even redacted any part of an opinion.

8 So, I know the parties know how to work through
9 these issues, so I wanted to give you some time to do that.
10 But yes, you can file the agreement and these letters under
11 seal for the moment and then you can work through it.

12 MR. BUCHANAN: Okay. Excellent. Thank you, Your
13 Honor. We will do that.

14 THE COURT: Okay. Anything else?

15 (No verbal response)

16 THE COURT: Then thank you again. Thank you again
17 for getting together so quickly.

18 We're adjourned.

19 MR. BUCHANAN: Thank you.

20 MS. EWALD: Thank you, Your Honor.

21 (Proceedings concluded at 2:27 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

July 7, 2023

William J. Garling, CET**D-543
Certified Court Transcriptionist
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