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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 COMPANY, LLC,	.	Wilmington, Delaware 19801
	.	
Defendants.	.	Friday, August 4, 2023
.	10:31 a.m.

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

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INDEX

MOTIONS:

PAGE

Agenda

Item 1: Bench Ruling re: Welded's Motion for Partial
Summary Judgment Regarding Contract
Interpretation and Contribution Claim
[Docket No. 308]

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Transcriptionist's Certificate

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1 (Proceedings commenced at 10:31 a.m.)

2 THE COURT: Good morning. We're here for my bench
3 ruling on Welded's motion for partial summary judgment.

4 Before I read my ruling, Ms. Johnson informed me I
5 was wrong on the official transcript issue that we talked
6 about at the pretrial conference, and so if she hasn't
7 already, she will reach out so that we can get this resolved
8 and done correctly, but apparently, I was wrong on how we do
9 this.

10 Okay. Thank you for gathering this morning. This
11 is an oral ruling on Welded's motion for partial summary
12 judgment on three issues of contract interpretation, arising
13 out of its contract dispute with Transco. As the parties
14 know, I held argument on July 26th and took the matter under
15 advisement.

16 I thank counsel for coming together quickly and
17 providing excellent argument. As I stated at the conclusion
18 of argument, time prevents me from writing, but I will also
19 place this bench ruling on the docket.

20 Because I am ruling for the parties who are
21 familiar with the contract and the disputes, I am not
22 providing background. Any necessary, general background can
23 be found in my ruling on Transco's motion for partial summary
24 judgment, which was previously issued.

25 Issue one: Equipment fee for travel pay and per

1 diem. Welded moves for a determination on summary judgment
2 that travel pay and per diem are included in the calculation
3 of equipment fee. Welded relies primarily on the definition
4 of labor costs and, in particular, (iii), as well as exhibits
5 to Section 8 of the contract.

6 Transco concedes that travel pay and per diem are
7 reimbursable under the contract, but argues that they are
8 expressly excluded from the category of labor costs used to
9 calculate the equipment fee. Transco characterizes travel
10 pay and per diem as expenses reimbursable under Section 8,
11 Article 2(f) and (g) of the contract. As expenses, Transco
12 argues, travel pay and per diem are not compensation for
13 actual work performed or wages and benefits payable under
14 Section 8, Article 2(d) of the contract, and so are not used
15 in the calculation of equipment fee. Transco argues that to
16 give meaning to every provision of the contract, I must
17 exclude travel pay and per diem, as Transco contends.

18 Both parties assert that the contract is
19 unambiguous. The contract provides the answer. Section 8,
20 titled "Compensation" governs. In terms of the architecture
21 of the section of the contract, Section 8 has six articles,
22 two of which are relevant here. Article 1 provides that
23 Transco agrees to compensate Welded and Welded agrees to
24 accept remuneration pay on an actual cost basis in accordance
25 with the components and methods of payment in Article 2.

1 Article 2, after defining relevant terms, provides
2 how each element of the work will be paid for, including
3 labor, supervision, management and planning, equipment,
4 materials, supplies, consumables, and services.

5 As relevant here, paragraph (d) addresses
6 compensation for work by MPLA personnel and field personnel
7 and specifically refers to payment for wages and benefits, as
8 set forth in the union agreements listed on Exhibit 3 and the
9 rates and benefits for field personnel listed on Exhibit 1.

10 Paragraphs (f) and (g) cover living and travel
11 expenses for all types of personnel, as well as other
12 expenses, such as for vehicle rental and airfare, which are
13 reimbursable by Transco to Welded.

14 The relevant definitions here are "equipment fee"
15 and "labor costs." Equipment fee is defined as:

16 "A flat fee, calculated at 50 percent of labor
17 costs, payable for actual work performed by all MPLA
18 personnel and field personnel assigned to the project."

19 Labor costs is defined as:

20 "The actual wage rates -- (i), the actual wage
21 rates and benefits paid to MPLA personnel, pursuant to the
22 MPLA for actual work performed; (ii), the actual wages and
23 benefits in accordance with Exhibit 1, paid to field
24 personnel for actual work performed; and (iii), for both (i)
25 and (ii) above, to the extent, however, not already addressed

1 by, or covered under the MPLA, with respect to MPLA
2 personnel, fringe benefits, employee, vehicle rental pay,
3 travel pay, per diem, fuel pay, payroll taxes, and insurance,
4 in accordance with Exhibit 1, actually paid to MPLA and field
5 personnel in connection with payment for actual work."

6 I conclude that the definitions are unambiguous
7 and that both per diem and travel pay are included in the
8 baseline of labor costs from which the equipment fee is
9 calculated. As discussed extensively during argument,
10 (iii) specifically pulls both, travel pay and per diem into
11 the definition of "labor costs."

12 Paragraph (f)(1) also specifically states that
13 travel expenses and per diem are a part of labor costs;
14 accordingly, by the plain language of the contract, both
15 travel pay and per diem, are included in labor costs and,
16 thus, used to calculate the equipment fee.

17 And as the definition of labor costs is only used
18 to calculate the equipment fee, any other reading is
19 unnatural.

20 In light of the specifically defined terms, the
21 fact that travel pay and per diem are expenses cannot change
22 the result. Nothing in the law prohibits parties from
23 defining terms as they choose; here, had the parties not
24 wanted labor costs to include the items listed in (iii),
25 whether they be denominated benefits or expenses under the

1 contract, they should not have been included. There's simply
2 no way to read out the list of items included in (iii).

3 Perhaps recognizing that the literal language of
4 the contract includes travel pay and per diem in labor costs,
5 Transco points to what it believes are limiting words in
6 both, the definition of labor costs and equipment fee;
7 specifically, Transco points to the words "for actual work
8 performed" and suggests that somehow being paid a per diem or
9 for travel are not compensation for actual work.

10 Transco points to nothing in the contract or
11 otherwise to support this position, nor does it ring true
12 from an ordinary definition of work. Moreover, Transco
13 admits that it has to reimburse Welded for both per diem and
14 travel pay, and under the contract, both are reimbursable in
15 connection with work performed. See, for example,
16 paragraph (f) (2), (f) (3), and (g).

17 Finally, at argument, I asked counsel what purpose
18 (iii) of the definition of labor costs would serve if it was
19 not included as part of the baseline for determining the
20 equipment fee? The only response was that Welded might need
21 (iii) in the definition of labor costs in order to ensure
22 that it is paid for each of the listed categories.

23 Welded, however, takes the position that I have
24 adopted, namely, that the definition of labor costs exists
25 for one purpose: as the baseline for determination of the

1 equipment fee. Further, the contract never uses the word
2 "labor costs" to define what the parties agreed Transco would
3 pay under the contract; rather, all of the categories of
4 benefits or expenses that Transco must pay under the contract
5 are picked up in Section 8, paragraphs (d) through (g).

6 The parties were free to agree to whatever
7 formulation they chose to arrive at as the definition of
8 equipment fee. Had the parties wanted to exclude some
9 category of benefit or expenses from equipment fee, it would
10 have been easy enough to do so; in fact, the parties did.
11 Paragraph (d)(4) provides that, "Company shall pay no
12 equipment fee in connection with work performed prior to
13 mobilization."

14 Had Transco wanted to exclude permitted and travel
15 pay from equipment fee, a simple declarative sentence, such
16 as the one above, would have been done this trick; instead,
17 arguing that (iii) was included simply to exclude the listed
18 categories from inclusion in the equipment fee, because those
19 items are not for "actual work performed" or for some other
20 reason, makes no sense.

21 To rewrite the definition of labor costs to
22 somehow be consistent with what one party now believes to be
23 the nature of the contract, which was admittedly bespoke, is
24 not appropriate. The arguments made by Transco are too far a
25 stretch. As there are no material facts in dispute, summary

1 judgment on this issue is granted in favor of Welded.

2 Issue two: Treatment of mechanics under the
3 contract. The second issue addresses reimbursement under the
4 contract for work performed by mechanics. First, Welded
5 asserts that it is entitled to reimbursement from Transco for
6 mechanic work on included equipment. Welded looks to
7 Section 8, Article 2, paragraph (d), and several exhibits to
8 Section 8, as well as the definition of labor costs.

9 Second, Welded argues that labor costs includes
10 work performed by mechanics, and as such, it is included in
11 the basis of the equipment fee calculation.

12 Transco looks to other provisions of the contract.
13 Transco starts with the purpose of the equipment fee, which
14 is set forth in Article 2, paragraph (e) (1) of Section 8.
15 That paragraph states that Welded shall "provide and supply"
16 all included equipment in connection with the work and that
17 "the equipment fee shall cover the cost, expense, overhead,
18 profit, and all compensation due and payable to contractor in
19 connection with the provision and supply of included
20 equipment."

21 Transco argues provision and supply must include
22 all labor necessary to maintain and repair the included
23 equipment, which is what mechanics do; thus, Transco
24 concludes that work by mechanics is not part of labor costs
25 or included for purposes of calculating the equipment fee.

1 Again, both parties assert that the contract is
2 unambiguous. Once again, the contract provides the answer.
3 Section 8, Article 2, paragraph (d) specifies how Transco
4 will compensate Welded for labor, which, per the contract,
5 includes manual labor, professional services, management,
6 supervision, and/or consultation.

7 For compensation purposes, paragraph (d) divides
8 persons who provide labor into four categories: MPLA
9 personnel, field personnel, home office personnel, and
10 subcontractors. Each of MPLA personnel, field personnel,
11 home office personnel, and subcontractors is defined in
12 paragraph (a).

13 In the opening brief, Welded identifies the
14 mechanics at issue as MPLA personnel. Transco does not
15 dispute this in its answering brief. And to this end, I note
16 that the MPLA International Union of Operating Engineers
17 agreement referenced in Exhibit 3 to Section 8, provides at
18 page 308 that there will be a master mechanic in charge of
19 all equipment on the job, and at page 327, the agreement
20 references "mechanic helpers." Further, the National
21 Pipeline agreement at page 110 classifies truck mechanics in
22 group one, and also mentions mechanics at page 122; thus,
23 under paragraph (d)(1) of Section 8, Transco is to compensate
24 Welded for work performed by MPLA personnel who are mechanics
25 at the rates established by the MPLA.

1 Transco does not really take issue with this
2 analysis; rather, Transco relies on a different portion of
3 Section 8. It argues that the cost of mechanics is covered
4 by the equipment fee. Transco turns to paragraph (e), which
5 states that:

6 "Compensation for contractor-provided equipment,
7 materials, supplies, and/or consumables, shall be paid in
8 accordance with this subparagraph (e)."

9 And then Transco specifically relies on
10 paragraph (e) (1), which states:

11 "Contractor shall provide and supply all included
12 equipment in connection with the work. The equipment fee
13 shall cover the cost, expense, overhead, profit, and all
14 compensation due and payable to contractor, in connection
15 with the provision and supply of included equipment."

16 Transco asserts that the cost of maintaining and
17 repairing the included equipment, including the cost of labor
18 to do so, that is, the mechanics, were expenses incurred in
19 connection with the provision and supply of the included
20 equipment. Transco argues that to pay both, the equipment
21 fee and to pay separately for mechanics, who maintain and
22 repair the included equipment fee, is double payment.

23 There are at least three problems with Transco's
24 analysis. First, the word "labor" is nowhere included in
25 paragraph (e) (1) and, as just recited, the list of what is

1 covered under paragraph (e) is equipment, materials,
2 supplies, and/or consumables, but not labor.

3 Second, the words "maintaining" and "repairing" do
4 not appear in the list of what the equipment fee covers;
5 rather, Transco reads those words into the sentence as what
6 it believes is a necessary component of provision and supply.
7 But those words could easily have been written into
8 paragraph (e)(1). They were not.

9 Third, as already discussed, compensation for
10 manual labor, and, in particular, MPLA personnel, is
11 specifically addressed in paragraph (d). Had the parties
12 wanted to exclude mechanics from the definition of MPLA
13 personnel, they could have done so.

14 Accordingly, I conclude that under the contract,
15 Transco is to compensate for work performed by mechanics, who
16 are MPLA personnel, as MPLA personnel, not as part of the
17 equipment fee.

18 I will not read mechanics into paragraph (e),
19 where they are clearly included in paragraph (d). Summary
20 judgment on this issue is granted in favor of Welded.

21 This conclusion necessarily leads to the further
22 conclusion that work performed by mechanics is part of the
23 baseline against which the equipment fee is calculated, as
24 mechanics are MPLA personnel. This is a straightforward
25 application of the definition of equipment fee.

1 Once it is determined that mechanics are MPLA
2 personnel, their compensation becomes part of the
3 determination of the equipment fee. Summary judgment on this
4 issue is also granted in favor of Welded.

5 Finally, on this second issue, after the briefing
6 and argument on the summary judgment motion was complete,
7 Transco moved to supplement its opposition, suggesting that
8 it was responding to a question I posed at argument. The
9 supplement is a January 16, 2018, email with the subject line
10 "ASR billable v non-billable list."

11 Welded objected to Transco's request to
12 supplement, arguing that the submission comes too late, as
13 the document was produced years ago and used in deposition,
14 and that Transco's submission runs counter to Transco's
15 argument, that the contract is unambiguous. Welded also
16 points out that this email does not reflect a decision by
17 Welded on what was, in fact, billable under the contract.

18 I agree that the request to supplement comes too
19 late and deny it on that ground. I also note, however, that
20 given my ruling, which is made on a plain reading of the
21 contract, the email is irrelevant.

22 Issue three: Claim related to subcontractors and
23 suppliers paid by the surety. The third issue on summary
24 judgment is a request by Welded for a ruling that Transco has
25 no claim for contribution based on the nonpayment of

1 subcontractors and suppliers on the project.

2 Transco counters that Welded has not shown by
3 competent evidence that Transco has no claims based on
4 payments owed that Welded did not pay and suggests that there
5 is still some damage claim, based on expenses invoiced to
6 Transco that were not incurred.

7 While I am highly skeptical that Transco has some
8 claim based on the delay in payments to subcontractors or
9 suppliers and/or payments made by Federal Insurance Company
10 to subcontractors or suppliers, the theories of recovery have
11 not been sufficiently briefed to rule.

12 At trial, Transco will have the burden on any such
13 claims and damages and it is more appropriate to rule in that
14 context than on summary judgment on issue three. For that
15 reason, summary judgment on the third issue is denied.

16 That concludes my ruling. Are there any
17 questions?

18 Okay. Mr. Guerke?

19 MR. GUERKE: No questions, Your Honor. Thank you.

20 THE COURT: Thank you.

21 Okay. Then we are adjourned.

22 Thank you very much for assembling this morning.

23 MR. GUERKE: Thank you, Your Honor.

24 COUNSEL: Thank you, Your Honor.

25 (Proceedings concluded at 10:53 a.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

August 4, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
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