

Docket Number: 2123

NEW CASTLE CONSTRUCTION COMPANY, INC.

Kenneth W. Lee, Esquire

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

John J. Robinson, Jr., Assistant Chief Counsel

June 7, 1996

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$651,191.82+.

June 11, 1996

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT 7/11/96.**

June 18, 1996

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General June 13, 1996.

CLOSED

Letter requesting an extension of time in which to file Answer and New Matter filed by attorney for Defendant.

July 26, 1996

Letter forwarded to attorney for Defendant granting the extension of time, with copy forwarded to attorney for Plaintiff. Answer with New Matter due July 31, 1996.

July 31, 1996

Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 1, 1996

Letter forwarded to attorney for Plaintiff requesting a Reply to New Matter. **Reply due 9/2/96.**

August 30, 1996

Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 30, 1996

Brief in Support of Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 17, 1996

Letter received from attorney for Defendant requesting an extension of time until October 17, 1996 in which to file its response to Plaintiff's Preliminary Objections to Department's New Matter.

October 24, 1996

Defendant's Letter/type response to Plaintiff's Preliminary Objections to Defendant's Answer and New Matter filed by attorney for Defendant.

January 7, 1997

The Board rendered an Opinion and made the following Order: **AND NOW**, this 7th day of January, 1997, the Board rules as follows on the Preliminary Objections filed by the Plaintiff, New Castle Construction Company, Inc., to the Pleadings of the Defendant, Commonwealth of Pennsylvania, Department of Transportation: Preliminary Objections as filed to the Answer to paragraph 1 and 2 of the Plaintiff's Complaint are now **MOOT** due to the Brief of the Defendant. The Defendant is **DIRECTED** to file an Amended Answer to only these two paragraphs. The remaining Preliminary Objections of the Plaintiff are **DENIED**. This denial is in accordance with the above-stated opinion with the expectation that during a discovery the parties will be in enlightened as to the position of both parties and the Board will be advised of all factors so that an appropriate opinion can be rendered.

January 13, 1997

Acceptance of Service of Opinion and Order dated January 7, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 9, 1997.

January 24, 1997

Acceptance of Service of Opinion and Order dated January 7, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 17, 1997.

January 24, 1997

Amended Answer filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 31, 1997

Defendant's First Request for Production of Documents filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 13, 1997

Plaintiff's Reply to Defendant's First Request for Production of Documents filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 24, 1997

Defendant's Interrogatories to Plaintiff - First Set filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 3, 1997

Motion for Sanctions, Protective Order or Other Appropriate Relief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 20, 1997

Defendant's Response to Plaintiff's Motion for Protective Order, Sanctions or Other Appropriate Relief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 7, 1997

Status letter received from attorney for Plaintiff.

July 17, 1997

The Board rendered an Opinion and made the following Order: **AND NOW,** this 17th day of July, 1997, based upon Plaintiff's Motion for Protective Order, and after review of Defendant's Response and the facts of the case it is hereby **ORDERED** and **DECREED** that the Plaintiff's Motion for Protective Order is granted, and that the Defendants, Commonwealth of Pennsylvania, Department of Transportation, employees, agents, representatives, officers, or attorneys are prohibited from communicating with Thomas D. Diddle, as to any matter relating to or in connection with the above captioned subject or project without the consent or presence of Mr. Diddle's personal counsel or Plaintiff's counsel pending further disposition by the Board.

July 25, 1997

Acceptance of Service of Opinion and Order dated July 17, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 23, 1997.

August 8, 1997

Acceptance of Service of Opinion and Order dated July 17, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 21, 1997.

August 27, 1997

Plaintiff's Reply to New Matter and Answer to Counterclaim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 27, 1997

Plaintiff's Motion for Partial Judgment on the Pleadings and Brief in Support filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. **RESPONSE DUE FROM DEF. 9/29/97.**

September 23, 1997

Defendant's Response to Claimant's Motion for Partial Judgment on the Pleadings and Defendant's Brief in Support of its Response to Claimant's Motion for Partial Judgment on the Pleadings filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 2, 1997

The Board rendered an Opinion and made the following Order: **AND NOW** this 2nd day of December, 1997, upon due consideration of Plaintiff's Motion for Partial Judgment on the Pleadings and Defendant's Response thereto, it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.

December 10, 1997

Acceptance of Service of Opinion and Order dated December 2, 1997 received by attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff December 8, 1997.

December 10, 1997

Acceptance of Service of Opinion and Order dated December 2, 1997 received by attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 5, 1997.

January 21, 1998

Hearing scheduled for September 14-Oct.2,1998 in Board's Courtroom No.1, 6th Floor, Fulton Bank Building, Harrisburg, PA to commence at 9:30 a.m.

April 13, 1998

Notice of Service of Discovery Responses filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 1, 1998

Stipulation for Protective Order filed by attorney for Plaintiff and Defendant.

August 4, 1998

Motion to Compel Answers to Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 5, 1998

Certificate of Service of Defendant's Responses to Plaintiff's First Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 6, 1998

Motion for Protective Order and Defendant's Brief in Support; Response to Plaintiff's Motion to Compel; Defendant's Motion in Limine and Brief in Support.

August 6, 1998

Defendant's Motion in Limine filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant and Brief in Support of its Motion in Limine filed by attorney for Defendant.

August 14 1998

Copies of approved and signed Stipulation of Order signed by David C. Clipper, Chief Administrative Judge on **August 11, 1998**. Copies forwarded to attorney for Plaintiff and attorney for Defendant.

August 24, 1998

Acceptance of Service of Stipulation for Protective Order dated August 14, 1998 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 17, 1998.

August 24, 1998

Acceptance of Service of Stipulation for Protective Order dated August 14, 1998 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 19, 1998.

September 1, 1998

Defendant's Preliminary Statement filed. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

September 3, 1998

Notice of Service of Defendant's Amended Responses to Plaintiff's First Set of Continuing Interrogatories. Served upon Plaintiff by Defendant.

September 8, 1998

The Board rendered an Opinion and made the following Order: **AND NOW**, this 8th day of September 1998, it is **ORDERED** and **DECREED** the Motions to Compel and for Protective Order are hereby **DISMISSED** as being moot. It is further **ORDERED** and **DECREED** that the Motion in Limine is hereby dismissed without prejudice. The Board of Claims hereby expressly reserves the right unto counsel for Defendant to reassert the Motion in Limine at anytime deems it appropriate at the trial of the case.

September 8, 1998

Letter received from attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

September 8, 1998

Faxed letter received from attorney for Plaintiff responding to Defendant's September 8, 1998 letter. Copy forwarded to Defendant by attorney for Plaintiff.

September 9, 1998

Faxed letter received from attorney for Plaintiff confirming a conversation with senior counsel, Robert McLaughlin that the hearing will commence on September 21, 1998 rather than September 14, 1998. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 9, 1998

Plaintiff's Pretrial Statement. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 10, 1998

Letter forwarded to parties advising the new start date for the hearing is September 21, 1998.

September 11, 1998

Letter received from attorney for Defendant advising that their principal witness is not available for the trial scheduled September 21, October 2, 1998. Their pre-trial statement should be amended to conform with the foregoing information.

September 17, 1998

Plaintiff's Brief in Support of its Motion in Limine to exclude Defendant's Liquidated damages and in response to Defendant's Motion in Limine filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 17, 1998

Plaintiff's Amended Pretrial Statement filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 18, 1998

Letter received from attorney for Defendant advising that the Plaintiff's brief filed in support of its Motion in Limine should be considered a Motion for Summary Judgement since it seeks the Board to rule that the liquidated damages assessed by the Defendant against Plaintiff were a penalty, and are unenforceable. Defendant requests the Board to deny Plaintiff's Motion in Limine.

September 21, 1998

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 9:30 a.m.

September 22, 1998

Hearing held in Board's Courtroom No., 2, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 9:30 a.m.

September 23, 1998

Hearing held in Board's Courtroom, No. 2, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 9:30 a.m. Hearing settled.

September 23, 1998

Letter received from attorney for Defendant responding to Plaintiff's brief in support of its Motion in Limine. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

CLOSED

Acceptance of Service of Opinion and Order dated September 8, 1998
Receipt of same acknowledged by attorney for Defendant September 14, 1998.

Testimony of hearing held September 21, 22 and 23, 1998.

November 9, 1998

Copy of testimony forwarded to attorney for Defendant.

December 14, 1998

Praecipe to Settle and Discontinue filed by attorney for Plaintiff.
Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 21, 1998

The Board made the following Order: **AND NOW**, this 21st day of December, 1998, upon receipt of a Praecipe to Settle and Discontinue filed on December 14, 1998, by Kenneth W. Lee, Esquire, counsel for New Castle Construction Company, Inc., it is **ORDERED and DIRECTED** that said case be marked "settled, discontinued and ended with prejudice."
Copy forwarded to attorney for Plaintiff and Defendant.

December 29, 1998

Acceptance of Service of Order dated December 21, 1998 received by attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff December 23, 1998.
