

**Closed**

**Docket Number: 3667**

**CONSOLIDATED WITH 3661, 3677, AND 3673**

**NELLO CONSTRUCTION COMPANY, A DIVISION OF GITO, INC.**

**RICHARD G. KOTARBA, ESQUIRE**

**VS.**

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES**

**TRENT HARGROVE, ESQUIRE  
ELIZABETH A. O'REILLY, ESQUIRE  
MICHAEL C. BARRETT, ESQUIRE**

**October 27, 2003**

Plaintiff filed Claim, filing fee and proof of mailing. Amount of Claim: [Unspecified.] ACCEPTED FOR FURTHER PROCESSING.

---

**October 29, 2003**

Board issued Acknowledgment letter and forwarded copy of Claim to Chief Deputy Attorney General.

---

**November 6, 2003**

Chief Deputy Attorney General filed Acknowledgment form. Receipt of same acknowledged by Chief Deputy Attorney General November 3, 2003.

---

**November 21, 2003**

Defendant filed Answer With New Matter. Copy forwarded to Plaintiff.

---

**December 10, 2003**

Plaintiff filed Reply to New Matter. Copy forwarded to Defendant.

---

**December 15, 2003**

Board issued letter to parties to proceed with discovery.

---

**July 20, 2004**

Board issued letter to parties requesting a status report.

---

**July 29, 2004**

Plaintiffs filed a letter advising that the case is an active, ongoing proceeding. Plaintiff plans to complete discovery by the end of the year.

---

**August 30, 2004**

Plaintiff filed Motion to Consolidate Related Actions and Brief in Support. Copy forwarded to Defendant.

---

**November 8, 2004**

Plaintiff filed a letter submitting a motion to consolidate the cases filed at Docket Nos. 3661, 3673 and 3677. Once the motion is granted, the consolidated cases are to be scheduled for hearing.

**December 6, 2004**

Board issued an Opinion and Order. **Order as follows: AND NOW,** this 6<sup>th</sup> day of November, 2004, it is **ORDERED** and **DECREED** that Nello Construction Company, A Division of Gito, Inc.'s Motion to Consolidate Related Actions is **GRANTED**. The related actions filed at Docket Nos. 3667, 3673 and 3677, Nello Construction Company, A Division of Gito, Inc. vs. Commonwealth of Pennsylvania, Department of General Services, shall be consolidated for all purposes with and into the action filed at Docket No. 3661. For the purpose of clarity, the parties shall observe the following conventions: (1) All subsequent filings shall utilize the consolidated Case Caption and Docket Number; 2) All subsequent filing that relate only to activities in one or more (but not all) of the originally separate actions shall, in addition, display in parenthesis in the caption a reference to the old docket number (s) and Plaintiff's name in the original action (s), e.g. (Old Docket No. 3667 - Nello Construction), or (Old Docket No. 3673 - Nello Construction), as the case may be; and 3) All subsequent filings that relate to activities in all of the originally separate cases shall, in addition, display in the caption the parenthetical notation "(ALL)".

---

**December 8, 2004**

Acceptance of Service of Opinion and Order. Receipt of same acknowledged by attorney for Defendant December 7, 2004.

---

**December 13, 2004**

Acceptance of Service of Opinion and Order. Receipt of same acknowledged by attorney for Plaintiff December 8, 2004.

---

**January 6, 2005**

Plaintiff filed a letter advising that in view of the fact that the actions are consolidated into Docket No. 3661 (ALL) and that discovery is completed, Plaintiff requests that hearing dates be

established on the consolidated actions as soon as possible.

---

**January 27, 2005**

Board issued a Scheduling Order: **AND NOW**, this 27<sup>th</sup> day of January, 2005, it is hereby **ORDERED** and **DECREED** as follows: 1. Counsel for both parties have advised the Board that discovery is complete, so discovery in this case shall be considered closed as of the exit date of this order; 2. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than February 21, 2005; 3. A pre-trial conference is scheduled for Tuesday, March 4, 2005, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101; 4. The last day for filing pre-trial motions is March 14, 2005; and 5. This matter is set for hearing before the Board beginning on Monday, June 13, 2005 and running through Friday, June 17, 2005, as necessary. Said hearing shall be held at 200 North Third, street, Fulton, Building, 6<sup>th</sup> Floor, Harrisburg, Pas 17101, commencing at 9:30 a.m. Copy forwarded to all parties of record.

---

**June 10, 2005**

Board issued an Opinion and Order. **AND NOW**, this 10<sup>th</sup> day of June. 2005, after review of Defendant's Motion for Summary Judgment and its Brief in Support thereof, and Plaintiff's Response and its Brief and Support, thereof, it is hereby **ORDERED** and **DECREED** that Defendant's Motion is **DENIED**. The hearing in this matter shall proceed as scheduled. Copy forwarded to all parties of record.

---

**June 13, 2005**

Panel hearing (Kambic and Swartz)held on 6<sup>th</sup> Floor Conference Room, 200 North Third Street, Harrisburg, PA.

---

**June 14, 2005**

Panel hearing (Kambic and Swartz) held on 6<sup>th</sup> Floor Conference Room, 200 North Third Street, Harrisburg, PA

---

**June 15, 2005**

Panel hearing (Kambic and Swartz) held on 6<sup>th</sup> Floor Conference Room, 200 North Third Street, Harrisburg, PA

---

**June 16, 2005**

Panel hearing (Kambic and Swartz) held on 6<sup>th</sup> Floor Conference Room, 200 North Third Street, Harrisburg, PA. Completed.

---

**August 1, 2005**

Testimony of Panel Hearing held June 13, 2005, filed.

---

**August 2, 2005**

Testimony of Panel Hearing held June 14, 2005, filed.

---

**August 5, 2005**

Testimony of Panel Hearing held June 15, 2005 filed.

---

**August 5, 2005**

Testimony of Panel Hearing held June 16, 2005 filed.

---

**August 8, 2005**

Board forwarded copy of testimony of panel hearing held June 13, 14, 15 and 16, 2005 to Defendant.

---

**August 8, 2005**

Board issued a letter directing Plaintiff and Defendant to file Findings of Fact and Conclusions of Law.

---

**September 22, 2005**

Plaintiff filed Nello Construction Company's Proposed Findings of Fact and Conclusions of Law as well as Brief in Support. Copy forwarded to all parties of record.

---

**October 24, 2005**

Defendant filed Proposed Findings of Fact and Conclusions of Law and Post Trial Brief of the Commonwealth. Copy forwarded to Plaintiff.

---

**October 27, 2005**

Plaintiff filed letter via fax advising that they are in receipt of Defendant's Proposed Findings of Fact, Conclusions of Law and Brief. Plaintiff intends to file a reply brief by November 15, 2005.

---

**November 2, 2005**

Board forwarded letter to Plaintiff, with copy to Defendant granting an extension of time until November 15, 2005, to file a reply brief.

---

**November 15, 2005**

Plaintiff filed Proposed Findings of Fact and Conclusions of Law With Respect to Defendant's Counterclaim, as well as Reply Brief. Copy forwarded to Defendant.

---

**November 16, 2005**

Letter forwarded to Panel Members requesting the Panel Report.

---

**February 8, 2006**

Panel Members (Swartz and Kambic) filed Panel Report.

---

**March 20, 2006**

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 20<sup>th</sup> day of March 2006, **IT IS ORDERED** and **DECREED** that judgment be entered in favor of Plaintiff, Nello Construction Company, and against Defendant, Commonwealth of Pennsylvania, Department of General Services, in the sum of \$544,881.23. This sum consists of: \$458,678.58 in aggregate extended cost damages; \$83,648.29 in prejudgment interest on the amount of aggregate extended cost damages; \$2,144.02 as reimbursement for the extra cost of custom-color floor mats; and \$410.34 in prejudgment interest on the amount of reimbursement for the extra cost of custom-color floor mats. In addition, Plaintiff is awarded post-judgment interest on the outstanding judgment at the statutory rate for judgments (6% per annum) beginning on the date of this Order and continuing until the judgment is paid in full. **IT IS FURTHER ORDERED** that Defendant's counterclaim for damages in the amount of \$41,620.00 is **DENIED**. Each party herein will bear its own costs and attorney fees. Copies forwarded to all parties of record.

---

**July 31, 2006**

Plaintiff filed Praecipe to Satisfy Judgment. Copies forwarded to Defendant.

---

**August 2, 2006**

Board issued an Opinion and Order. Order as follows: **AND**  
day of July , 2006, upon receipt of a Praecipe to Satisfy Judgment, executed by Richard G. Kotarba, Esquire, on behalf of Plaintiff, Nello Construction Company, a Division of Gito, Inc., requesting that the Board "Please mark the judgment against the Defendant in the above-captioned case as satisfied." docketed with this Board under date of July 31, 2006, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked "settled, discontinued and ended with prejudice." Copies forwarded to all parties of record.

---

**August 9, 2006**

Plaintiff filed Acceptance of service of Opinion and order dated August 2, 2006. Receipt of same acknowledged August 6, 2006.

**August 11, 2006**

Defendant filed Acceptance of Service of Order dated August 2, 2006. Receipt of same acknowledged by Defendant August 7, 2006.