

C L O S E D

Docket Number: 3677

CONSOLIDATED WITH 3661, 3667 AND 3673

NELLO CONSTRUCTION COMPANY, A DIVISION OF GITO, INC.

Richard G. Kotarba, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF GENERAL SERVICES**

Trent Hargrove, Chief Counsel
Elizabeth A. O'Reilly, Assistant Counsel

November 18, 2003

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

November 20, 2003

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

November 26, 2003

Chief Deputy Attorney General filed Acknowledgment form. Receipt of same acknowledged by Chief Deputy Attorney General November 24, 2003.

December 17, 2003

Defendant filed Answer with New Matter. Copy forwarded to Defendant.

January 8, 2003

Plaintiff filed letter via fax advising that due to the holidays his mail was received later than usual and accordingly, his Answer to Defendant's New Matter would be, according to his calculations, due on January 18, 2004. Plaintiff advises he will be filing same on/or before January 16, 2004.

January 14, 2004

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

January 16, 2004

Board forwarded letter directing parties to commence with discovery.

July 20, 2004

Board issued letter to parties requesting a status report.

August 6, 2004

Plaintiff filed letter advising that the case is an active and ongoing proceeding. Plaintiff plans to complete its 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 advising that a motion to consolidate was filed at Docket Nos. 3661, 3667, 3673 and 3677. Once the motion is granted, Plaintiff request that the consolidated cases be scheduled for hearing.

December 6, 2004

Board issued an Opinion and Order. **Order as follows:** **AND NOW**, this 6th 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.

June 10, 2005

Board issued an Opinion and Order. Order as follows: **AND NOW**, 10th 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 6th Floor, Conference Room, 200 North Third Street, Harrisburg, PA.

June 14, 2005

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

June 15, 2005

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

June 16, 2005

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

August 1, 2005

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

August 2, 2005

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

August 5, 2005

Testimony of Panel Hearing held on June 15, 2005 filed.

August 5, 2005

Testimony of Panel Hearing held on June 16, 2005 filed.

August 8, 2005

Board forwarded copy of testimony of Panel hearing held on 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 and 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

AND NOW, this 20th 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. Copy 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.