

Docket Number: 4054

WOHLSEN CONSTRUCTION

Michael P. Subak, Esquire
Joseph T. Imperiale, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

~~Andrew S. Gordon, Chief Counsel~~
Harry R. Walter, III, Assistant Counsel
David L. Narkiewicz, Assistant Counsel

VS.

SIMONE COLLINS, INC.

Paul A. Logan, Esquire
Frank S. Nofer, Esquire (co-counsel)

August 31, 2012

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$473,924.51+.

September 4, 2012

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

September 7, 2012

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged September 5, 2012.

September 21, 2012

Defendant filed answer and new matter.

September 24, 2012

Board forwarded letter to Plaintiff, with copy to Defendant, requesting a reply to new matter.

October 3, 2012

Plaintiff filed Reply to New Matter.

October 3, 2012

Board forwarded letter to parties directing them to proceed with discovery.

***January 31, 2013**

Defendant filed Complaint to Join Additional Respondent, which the Board is treating as a motion for permission to join additional defendant.

February 1, 2013

Board forwarded letter to parties requesting a brief in support within 10 days from Defendant, as well as a response within 30 days of receipt of the brief from Plaintiff.

February 11, 2013

Defendant filed Brief in Support of Motion for Leave to Join Additional Defendant.

March 12, 2013

Plaintiff transmitted (via fax) a letter advising that Plaintiff does not oppose DGS' motion for permission to join additional defendant.

March 13, 2013

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 13th day of March, 2013, it is **ORDERED** and **DECREED** that DGS' motion for permission to join Simone Collins, Inc. as an additional defendant is **GRANTED**. DGS may proceed promptly with filing and service of its complaint against Simone Collins, Inc. as part of the present action." Copy forwarded to Plaintiff and Defendant.

March 14, 2013

Plaintiff transmitted (via U.S. mail) a letter advising that Plaintiff does not oppose DGS' motion for permission to join additional defendant.

March 15, 2013

Defendant filed Acceptance of Service of Opinion and Order dated March 13, 2013. Receipt of same acknowledged March 14, 2013.

***March 18, 2013**

Defendant filed Complaint to Join Additional Defendant (Simone).

March 19, 2013

Board issued Acknowledgment letter and forwarded Complaint to Join Additional Defendant to Attorney General.

March 25, 2013

Plaintiff filed Acceptance of Service of Opinion and Order dated March 13, 2013. Receipt of same acknowledged March 20, 2013.

March 26, 2013

Attorney General filed acknowledgment of complaint to join additional defendant form. Receipt of same acknowledged March 21, 2013.

May 3, 2013

Simone filed preliminary objections to the complaint to join additional defendant, memorandum of law in support, a proposed order and an alternative proposed order.

May 3, 2013

Board forwarded letter to Defendant, with copy to Plaintiff and Simone advising of the rules for filing responses/briefs.

May 17, 2013

Defendant filed an Amended Complaint to Join Additional Defendant (Simone).

May 20, 2013

Board issued Acknowledgment letter and forwarded Amended Complaint to Join Additional Defendant to Attorney General.

May 23, 2013

Simone filed Entry of Appearance of Frank S. Nofer, Esquire as co-counsel on behalf of Simone.

May 23, 2013

Attorney General filed acknowledgment of amended complaint to join additional defendant form. Receipt of same acknowledged May 22, 2013.

June 4, 2013

Simone filed preliminary objections, memorandum of law in support and proposed order to DGS' amended complaint to join additional defendant.

June 4, 2013

Board forwarded letter to Defendant, with copy to Plaintiff and Simone advising of the rules for filing responses/briefs.

July 2, 2013

Defendant filed Answer to Preliminary Objections to Amended Complaint to Join Additional Defendant and Brief in Support.

July 12, 2013

Simone Collins filed Reply Memorandum of Law in Support of its Preliminary Objections.

July 22, 2013

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 22nd day of July, 2013, upon consideration of Simone Collins, Inc.'s preliminary objections to the amended joinder complaint, the answer filed by the Department of General Services and the reply from Simone Collins, Inc., it is **ORDERED** that the preliminary objections are **SUSTAINED** with respect to Paragraphs 15, 16 and 17. These Paragraphs are **DISMISSED**. The preliminary objection to Paragraph 18 is **OVERRULED**. The Department of General Services is granted leave to amend its pleading to conform with this Order within 30 days of the exit date of this Order." Copy forwarded to all parties of record.

July 24, 2013

Defendant filed Acceptance of Service of Opinion and Order dated July 22, 2013. Receipt of same acknowledged July 23, 2013.

July 29, 2013

Plaintiff filed Acceptance of Service of Opinion and Order dated July 22, 2013. Receipt of same acknowledged July 26, 2013.

August 2, 2013

Defendant filed Second Amended Complaint to Join Additional Defendant - Simone.

August 5, 2013

Board issued Acknowledgment letter and forwarded Second Amended Complaint to Join Additional Defendant - Simone to Attorney General.

August 8, 2013

Attorney General filed Acknowledgment of Second Amended Complaint to Join Additional Defendant form. Receipt of same acknowledged August 6, 2013.

August 14, 2013

Simone Collins filed Acceptance of Service of Opinion and Order dated July 22, 2013. Receipt of same acknowledged August 12, 2013.

August 28, 2013

Simone Collins filed a Notice of Intention to Enter Judgment of Non Pros of Professional Liability Claim.

August 28, 2013

Simone Collins filed Answer and New Matter to Second Amended Complaint to Join Additional Defendant.

September 9, 2013

Defendant filed Motion to Strike Off Notice of Intention to Enter Judgment of Non Pros and Brief in Support.

September 10, 2013

Board forwarded letter to Plaintiff, with copy to Defendant, advising of the rules for filing responses/briefs.

September 10, 2013

Defendant filed Answer to New Matter to Second Amended Complaint to Join Additional Defendant, Simone.

September 12, 2013

Board forwarded letter to parties directing them to proceed with discovery.

September 19, 2013

Defendant filed Notice of Service of Defendant's Answer to Request for Production of Documents and Answer to Expert Interrogatories.

September 20, 2013

Simone filed Notice of Service of Expert Witness Interrogatories and Request for Production of Documents of Simone Directed to Defendant.

October 2, 2013

Simone filed Response to Motion to Strike Off Notice of Intention to Enter Judgment of Non Pros, Brief in Support and Proposed Order.

October 16, 2013

Board forwarded a letter to Defendant, with copy to all parties of record, requiring Defendant file a complete copy of the professional services contract between Defendant and Simone as well as a stipulation from both parties as to the authenticity of same.

November 5, 2013

DGS filed a CD containing Agreement for Professional Services, Department's General Conditions for Professional Services Agreements, 1999 Edition; and Department's Bureau of Engineering and Architecture Project Manual which all form the complete contract between DGS and Simone Collins as requested by the Board.

December 3, 2013

Board rendered an Opinion and Order. Order as follows: **"AND NOW, this 3rd day of December, 2013, upon consideration of the Motion to Strike Off Notice of Intention to Enter Judgment of Non Pros filed by Defendant, Department of General Services, and the response to said motion by Additional Defendant, Simone Collins, Inc., IT IS HEREBY ORDERED that the Motion is GRANTED. IT IS HEREBY FURTHER ORDERED that the Notice of Intention to Enter Judgment of Non Pros on Professional Liability Claim by Simone Collins, Inc. is hereby STRICKEN."** Copy forwarded to all parties of record.

December 16, 2013

Plaintiff filed Acceptance of Service of Opinion and Order dated December 3, 2013. Receipt of same acknowledged December 11, 2013.

December 19, 2013

Simone Collins filed Motion for Reconsideration of the Board's Order and Opinion of December 3, 2013 or alternatively to certify such Order for Interlocutory Appeal pursuant to 42 Pa. C.S. § 702(b) and Pa. R.A.P. 1311, brief in support and 2 proposed orders.

December 20, 2013

Board forwarded letter requesting response to motion for reconsideration.

January 22, 2014

DGS transmitted via facsimile a letter requesting the Board abstain from ruling on the Motion for Reconsideration for a period of 7 days and advised that either Simone Collins will file a praecipe to withdraw motion or DGS will file its response.

January 23, 2014

Simone Collins filed a Praecipe to Withdraw Motion for Reconsideration of the Board's Opinion and Order of December 3, 2013.

January 23, 2014

Board withdraws Simone Collins' Motion for Reconsideration.

February 10, 2014

Defendant filed Notice of Service of a Notice of Deposition.

March 24, 2014

Simone Collins filed Motion for Summary Judgment, Memorandum of Law in Support and Proposed Order.

March 25, 2014

Board forwarded a letter to Plaintiff and Defendant, with copy to Simone Collins, advising of the rules for filing responses/briefs.

April 21, 2014

Defendant transmitted via facsimile a letter requesting an extension of time until April 25, 2014, in which to file its response to Simone's Motion for Summary Judgment and advised the opposing parties' counsel do not oppose.

April 22, 2014

Board forwarded letter to parties granting Defendant an extension of time until April 25, 2014, in which to file its response to Simone's Motion for Summary Judgment.

April 28, 2014

Defendant filed Answer to Motion for Summary Judgment and Brief in Support.

May 1, 2014

Simone Collins filed a Reply Memorandum of Law in Support of Motion for Summary Judgment.

May 2, 2014

Defendant filed a letter advising that this litigation is nearing conclusion and requests that the Board direct each party to submit a proposed scheduling order to establish deadlines.

July 25, 2014

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 25th day of July, 2014, upon consideration of the motion for summary judgment filed by Simone Collins, Inc. and the Department of General Services' opposition to the motion, it is **ORDERED** that the motion is **DENIED**." Copy forwarded to all parties of record.

July 29, 2014

Defendant filed Acceptance of Service of Opinion and Order dated July 25, 2014. Receipt of same acknowledged July 28, 2014.

July 31, 2014

Simone Collins filed Acceptance of Service of Opinion and Order dated July 25, 2014. Receipt of same acknowledged July 29, 2014.

August 1, 2014

Board forwarded a letter to parties requesting proposed scheduling information.

August 20, 2014

Defendant transmitted via fax a letter requesting a 7 day extension of time in which to file the parties' proposed scheduling orders.

August 21, 2014

Board forwarded letter to Defendant, with copy to all parties of record, granting the 7 day extension of time as requested by Defendant.

August 27, 2014

Defendant transmitted via fax a letter requesting an extension of time until September 8, 2014, in which to file the parties' proposed scheduling orders.

August 28, 2014

Board forwarded letter to Defendant, with copy to all parties of record, granting an extension of time as requested by Defendant.

September 9, 2014

DGS filed a letter providing parties' joint proposed hearing dates.

September 17, 2014

Board issued a scheduling order. Scheduling order as follows: "AND NOW, this 17th day of September, 2014, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to the other parties is February 13, 2015; 2. The last day for expert reports from defendant or additional defendant, if any, to be provided to the other parties is March 18, 2015; 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by April 22, 2015; 4. The last day for filing pre-trial motions is May 5, 2015; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than June 10, 2015 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, June 17, 2015 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing to begin on August 3, 2015 and run through August 7, 2015, or as otherwise necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to all parties of record.

September 22, 2014

Defendant filed Acceptance of Service of Scheduling Order dated September 17, 2014. Receipt of same acknowledged September 18, 2014.

October 1, 2014

Simone Collins filed Acceptance of Service of Order dated September 17, 2014. Receipt of same acknowledged September 26, 2014.

October 3, 2014

Plaintiff filed Acceptance of Service of Order dated September 17, 2014. Receipt of same acknowledged October 1, 2014.

April 22, 2015

Defendant filed a letter advising that both parties intend to file cross-motions for summary judgment on April 28, 2015 and request that both parties be permitted to file responses by no later than May 28, 2015.

April 27, 2015

Simone Collins filed a letter advising the Board that it intends to file a responsive pleading and supporting brief within 30 days of receipt of Plaintiff and Defendant's cross motions.

April 28, 2015

Plaintiff filed Motion for Summary Judgment, Memorandum of Law in Support & Proposed Order.

April 29, 2015

DGS filed Motion for Summary Judgment and Brief in Support seeking to dismiss Wohlsen's Statement of Claim.

May 20, 2015

Board forwarded Notice of Settlement Conference.

May 27, 2015

Simone Collins filed Answer and Motion of Simone Collins, Joining in the Motion for Summary Judgment of Defendant, Memorandum of Law in Support and Proposed Order.

May 27, 2015

Simone Collins filed Answer to Motion for Summary Judgment of Plaintiff, Memorandum of Law in Support and Proposed Order.

May 28, 2015

Plaintiff filed Answer to DGS's Motion for Summary Judgment and Memorandum of Law in Opposition.

May 28, 2015

DGS filed Answer to Plaintiff's Motion for Summary Judgment and Brief in Support.

June 3, 2015

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 3rd day of June, 2015, upon consideration of Plaintiff's motion for summary judgment and Defendant's motion for summary judgment, together with the parties' additional filings, **IT IS ORDERED** that both motions are **DENIED**." Copy forwarded all parties of record.

June 10, 2015

Simone Collins filed Pretrial Statement.

June 10, 2015

Simone Collins filed Acceptance of Service of Opinion and Order dated June 3, 2015. Receipt of same acknowledged June 8, 2015.

June 10, 2015

DGS filed pre-trial statement.

June 10, 2015

Plaintiff filed pre-trial statement.

June 17, 2015

Board held pre-trial conference.

June 25, 2015

Defendant filed Motion for Leave to file Amended New Matter to Statement of Claim and Brief in support.

June 26, 2015

Board forwarded letter to Plaintiff, with copy to Defendant and Additional Defendant, requesting a response to Defendant's motion for leave.

July 15, 2015

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 15th day of July, 2015, upon consideration of the Motion for Leave to File Amended New Matter to Statement of Claim filed by the Department of General Services, **IT IS ORDERED** that the Motion is **DENIED**." Copy forwarded to all parties of record.

July 17, 2015

Defendant filed Acceptance of Service of Opinion and Order dated July 15, 2015. Receipt of same acknowledged July 16, 2015.

July 20, 2015

Simone filed Acceptance of Service of Opinion and Order dated July 15, 2015. Receipt of same acknowledged July 17, 2015.

July 21, 2015

Plaintiff filed Acceptance of Service of Opinion and Order dated July 15, 2015. Receipt of same acknowledged July 20, 2015.

July 24, 2015

Parties filed a Joint Stipulation and a Joint Exhibit List.

July 24, 2015

Simone Collins requested via telephone six Subpoenas 234.1 - to attend with duces tecum.

July 24, 2015

Board forwarded six Subpoenas 234.1 - to attend with duces tecum dated July 24, 2015 to Simone Collins.

August 3, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

August 4, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

August 5, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa. Case completed.

August 11, 2015

DGS filed a complete copy of DGS' Exhibit Number 145 for inclusion in the record.

August 13, 2015

Plaintiff filed a letter requesting an extension of time on behalf of all parties, in which to file their proposed findings of fact, conclusions of law and legal brief.

August 13, 2015

Testimony of Board hearing held August 3, 2015 filed.

August 20, 2015

Testimony of Board hearing held August 4 & 5, 2015 filed.
(Last Day)

August 21, 2015

Board forwarded letter to parties (with copy of testimony to Defendant) setting briefing schedule.

August 26, 2015

Defendant filed Acceptance of Service of testimony of hearing held August 3, 4 & 5. Receipt of same acknowledged August 24, 2015.

November 23, 2015

Plaintiff filed Findings of Fact, Conclusion of Law and Brief.

December 18, 2015

Defendant transmitted via facsimile a letter requesting an extension of time until December 28, 2015 to file its proposed findings of fact, conclusions of law and brief, also advising that opposing counsel does not object, and requesting that if this extension is granted, could Simone Collins have an extension until January 18, 2015, in which to file its proposed findings of fact, etc.

December 21, 2015

Board forwarded letter to Defendant, with copy to all other parties, granting the extension of time until December 28, 2015 for Defendant to file its proposed findings of fact, conclusions of law and brief, as well as Simone Collins given an extension until January 18, 2015, in which to file its proposed findings of fact, etc.

December 28, 2015

Defendant filed Findings of Fact, Conclusions of Law and Brief as well as electronic version.

January 14, 2016

Plaintiff filed Motion for Leave to File a Reply Brief in Support of its Post-Trial Submissions as well as Plaintiff's Reply Brief in Support of its Post-trial Submissions.

January 15, 2016

Simone Collins transmitted via facsimile a letter advising that due to the Board of Claims being closed on Monday, January 18, 2016, it would be filing its findings of fact, conclusions of law and brief on Tuesday, January 19, 2016.

January 19, 2016

Simone Collins filed findings of fact, conclusions of law and post-trial brief as well as electronic version.

January 20, 2016

Board rendered Order. Order as follows: **"AND NOW**, this 20th day of January, 2016, **IT IS HEREBY ORDERED** that Plaintiff's motion for permission to file a reply brief to Defendant's post-trial brief is **GRANTED** and the reply brief filed with the motion is **ACCEPTED**." Copy forwarded to all parties of record.

January 26, 2016

Simone filed Acceptance of Service of Order dated January 20, 2016. Receipt of same acknowledged January 22, 2016.

January 27, 2016

Plaintiff filed Acceptance of Service of Order dated January 20, 2016. Receipt of same acknowledged January 25, 2016.

January 28, 2016

Defendant filed Acceptance of Service of Order dated January 20, 2016. Receipt of same acknowledged January 21, 2016.

July 14, 2016

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 14th day of July, 2016, it is **ORDERED AND DECREED** that judgment is entered against the Commonwealth of Pennsylvania, Department of General Services and in favor of Wohlsen Construction in the amount of \$299,305, comprised of the principal amount of \$238,782 plus prejudgment interest of \$60,523. Wohlsen Construction is further awarded post-judgment interest at the legal rate of 6% per annum on the outstanding amount of this judgment until paid. It is further **ORDERED AND DECREED** that a judgment of no liability is entered on the joinder claim filed by Commonwealth of Pennsylvania, Department of General Services against Simone Collins, Inc." Copy forwarded to all parties of record.

July 18, 2016

Defendant filed acceptance of service of Opinion and Order dated July 14, 2016. Receipt of same acknowledged July 15, 2016.

July 25, 2016

Attorney General filed acceptance of service of Opinion and Order dated July 14, 2016. Receipt of same acknowledged July 15, 2016.

July 18, 2016

Plaintiff filed acceptance of service of Opinion and Order dated July 14, 2016. Receipt of same acknowledged July 25, 2016.

October 19, 2016

Plaintiff filed praecipe to mark judgment as satisfied.
