

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MUNCY SCHOOL DISTRICT,	: No. 06-00696
Plaintiff	:
	:
vs.	:
	:
PACE CONSTRUCTION	: Order re: Plaintiff's Motion
MANAGERS, INC.,	: to Coordinate Actions
Defendant	:

ORDER

AND NOW, this _____ day of October, 2006, the Court GRANTS Plaintiff's Motion to Coordinate the above-captioned case with Lackawanna County case number 06-Civ-01764. Pursuant to Rule 213.1(d), any and all further proceedings in Lackawanna County case number 06-Civ-01764 are stayed. The Clerk of Judicial Records of Lackawanna County shall either transfer the original or send a copy of file number 06-Civ-01764 to the Prothonotary of Lycoming County for filing here. Any costs associated therewith shall be paid by Plaintiff Muncy School District.

The Court notes that the above-captioned case was commenced by a complaint filed March 29, 2006. The Lackawanna County case was commenced by writ of summons on April 7, 2006; a complaint was filed July 21, 2006. Both cases arise out of a construction project at the Ward L. Myers Elementary School in Muncy, Pennsylvania. Muncy's complaint seeks damages from Pace for failing to properly complete or perform certain work and for failing to complete the contract by the date set forth in the contract. Pace's complaint seeks damages for change orders, foundation changes, back charges, and for additional overhead/conditions due to delays and obstructions Pace attributes to Muncy School District. Pace's complaint also asserts claims against Foreman Construction Managers, Inc. and Foreman Architects Engineers. Rule 213.1(a) states in relevant part:

In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or occurrence, any party, with notice to all other parties, may file a motion requesting the court in which a complaint was first filed to order coordination of the actions.

Pa.R.Civ.P. 213.1(a). Defense counsel first argued that coordination was not appropriate because there was a declaratory judgment action involving these parties filed by Pace in July 2003 at Lackawanna County docket number 2003-Civ-2781 and, therefore, any coordination motion must be filed to the courts of Lackawanna County. The Court cannot agree. Although Pace filed a case in July 2003 in Lackawanna County, that case is no longer pending and was not pending at the time Muncy School District filed its complaint on March 29, 2006 or its motion to coordinate actions on August 4, 2006. The Honorable Trish Corbett issued a decision in case 2003-Civ-2781 on March 23, 2006 and that case is currently on appeal before the Pennsylvania Commonwealth Court. The Court also questions there would be a predominating common question of fact or law between 2003-Civ-2781 and the cases subject to this coordination motion. The 2003 case was a declaratory judgment action regarding the enforceability of an attorney fee provision of the contract. The cases subject to this motion deal with claims Muncy and Pace have against each other regarding certain work performed at the construction site and delays in completing the contract.

The Court also finds the factors listed in Rule 213.1(c) support coordination of the actions in Lycoming County. Both cases arise out of a construction project at Ward L. Myers Elementary School in Muncy, Pennsylvania. There are two additional Lycoming County cases arising out of this project: 04-02004 Reynolds Iron Works Inc. v. Pace Construction Managers, Inc. and Liberty Mutual Insurance Company;¹ and 04-01837 Rado Enterprises v. Muncy School District and Pace Constructions Managers Inc. v. Reynolds Iron

¹ The complaint in this case was filed on December 2, 2004.

Works, Inc. and Foreman Architects and Engineers.² All three Lycoming County cases were consolidated for trial and all parties agreed to the consolidation.

The Court finds there are common questions of fact or law that are predominating and significant to the litigation. It appears that the issue of who is responsible for increased costs and delays attributable to the fact that a Caisson foundation system could not be utilized in this project and another foundation system had to be constructed impacts most, if not all, of the cases.

The Court finds that coordination promotes the efficient utilization of judicial facilities and personnel as there will be one trial for all the claims arising out of this construction project instead of multiple trials that would increase the likelihood of inconsistent or duplicative rulings, orders or judgments.³

The Court also finds coordination would be more convenient for the parties, witnesses and counsel. Pace is a party to all four lawsuits. Although Pace is based in Lackawanna County and would like to have its complaint tried there, it would still have to come to Lycoming County for a trial on the other three cases. The Court believes it would be more convenient for the parties, witnesses and counsel to appear for one trial in Lycoming County than multiple trials.⁴

The Court also believes settlement of the actions without coordination is unlikely without further litigation. Muncy School District has filed preliminary objections to

² Rado's complaint was filed on November 2, 2004.

³ The Court notes that it consulted with the Honorable Terrence Nealon, the Lackawanna County Common Pleas judge assigned to hear Muncy's preliminary objections to Pace's complaint. Judge Nealon agreed that the cases should be coordinated in Lycoming County.

⁴ The Court notes the Lycoming County cases could not be coordinated with Pace's complaint in Lackawanna County because all three of the complaints were filed in Lycoming County before Pace filed 06-Civ-01764 in Lackawanna County.

Pace's complaint alleging improper venue and improper venue is one of the issues raised in its appeal from Judge Corbett's decision in the Lackawanna County declaratory judgment action.⁵

By the Court,

Kenneth D. Brown, P.J.

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Work file

⁵ Although the motion to coordinate actions does not mention the other two Lycoming County cases, settlement is more likely with coordination of the two 2006 lawsuits involving Muncy and Pace in Lycoming County, because all the disputes arising out of the construction project will be in one forum.