

Superior Court of New Columbia

Civil Division

Case No. CV-2024-1234

Smith Enterprises, Inc. v. Johnson Construction, LLC

Date: March 15, 2024

Judge: Honorable Elizabeth A. Carter

This matter comes before the Superior Court of New Columbia on a complaint filed by Smith Enterprises, Inc., a corporation based at 123 Main Street, Columbia City, New Columbia, against Johnson Construction, LLC, a limited liability company located at 456 Oak Avenue, Columbia City, New Columbia. The dispute arises from a contract signed on June 1, 2023, for the construction of a 10,000-square-foot office building at 789 Elm Street, Columbia City, with a stipulated completion date of December 15, 2023, and a total payment of \$2,500,000. Smith Enterprises alleges that Johnson Construction failed to complete the project as agreed, causing significant financial losses, while Johnson Construction contends that a labor strike excused its performance. After a bench trial held on February 10 through February 12, 2024, this Court now issues its findings and judgment.

The contract between Smith Enterprises and Johnson Construction outlined clear obligations. Johnson Construction was to provide all labor, materials, and permits, while Smith Enterprises agreed to make progress payments upon completion of milestones, including foundation, framing, roofing, and interior work. The agreement included a penalty clause imposing \$10,000 per week for delays beyond December 15, 2023, unless excused by force majeure events such as natural disasters, war, or strikes. By September 2023, Johnson Construction had completed the foundation and framing, receiving \$1,000,000 in payments. However, progress halted in October 2023 due to a regional labor strike, which Johnson Construction's project manager, Thomas Johnson, described as unforeseen. Smith Enterprises, through its CEO Margaret Smith, argued that the defendant failed to mitigate the labor shortage by hiring alternative workers. By the contractual deadline, the project was only 60% complete, with roofing and interior work unfinished. On January 5, 2024, Smith Enterprises terminated the contract and engaged a new contractor, incurring additional costs of \$1,200,000 to complete the building by March 1, 2024.

Smith Enterprises filed its complaint on January 10, 2024, seeking \$1,500,000 in damages, comprising \$1,200,000 for completion costs and \$300,000 for delay penalties. Johnson Construction countered, asserting that the labor strike constituted a force majeure event, relieving it of liability. The Court denied Johnson Construction's motion for summary judgment on January 20, 2024, finding disputed material facts regarding the foreseeability of the strike and mitigation efforts. During the trial, testimony was heard from Margaret Smith, Thomas Johnson, and Dr. Laura Evans, an expert in construction delays. Dr. Evans noted that regional news outlets reported labor shortages as early as August 2023, suggesting the strike was not entirely unforeseeable. She further testified that Johnson Construction made no significant efforts to hire non-union labor, a common mitigation strategy in New Columbia.

Under New Columbia law, a breach of contract occurs when a party fails to perform a material obligation without legal excuse, as stated in New Columbia Contract Code § 5-101. The contract required Johnson Construction to complete the project by December 15, 2023, and its failure to do so constitutes a breach unless the force majeure clause applies. The clause excuses delays due to unforeseeable events beyond the party's control, including strikes. However, the Court finds that the labor strike was foreseeable, given prior media reports, and Johnson Construction's lack of mitigation efforts undermines its defense. The precedent in *Carter v. Apex Builders*, 201 NC 345 (2019), supports the requirement that parties take reasonable steps to mitigate foreseeable disruptions. Smith Enterprises fulfilled its contractual duties by making timely payments, and no evidence indicates interference with Johnson Construction's performance.

Regarding damages, Smith Enterprises seeks \$1,200,000 for costs incurred to complete the project and \$300,000 for 30 weeks of delay penalties. The Court finds the completion costs reasonable, as evidenced by invoices from the new contractor. However, the delay penalty is adjusted to \$200,000, covering 20 weeks, as Smith Enterprises mitigated damages by completing the project by March 1, 2024. The total damages awarded to Smith Enterprises amount to \$1,400,000. Johnson Construction's counterclaim is denied, as the force majeure defense does not hold. The Court awards prejudgment interest at 6% from January 5, 2024, and court costs to Smith Enterprises.

In light of the evidence and applicable law, the Court finds in favor of Smith Enterprises, Inc. against Johnson Construction, LLC. The defendant breached the contract by failing to complete the office building by the agreed deadline, and the labor strike does not excuse this breach due

to its foreseeability and the defendant's failure to mitigate. Smith Enterprises is entitled to \$1,400,000 in damages, comprising \$1,200,000 for completion costs and \$200,000 for delay penalties, along with interest and costs. This judgment is final and resolves all claims in this matter. SO ORDERED on this 15th day of March, 2024, by Honorable Elizabeth A. Carter, Superior Court Judge.

Citations: New Columbia Contract Code § 5-101; Carter v. Apex Builders, 201 NC 345 (2019).