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Contract Termination May Impact Dispute Resolution Opportunities

BY LEONARDO N. ORTIZ

The American Institute of Architects (AIA) standard contract documents are commonly used in the construction industry today. The AIA General Conditions of the Contract for Construction (A201-1997) include a dispute resolution clause that requires all claims to be submitted to mediation and arbitration after initial decision by the architect.

However, anyone that uses the AIA documents should be aware that termination of the contract itself may create a question of the continued applicability of the contract's dispute resolution clause.

In 2007, the First District Court of Appeal of Florida issued its decision in *Auchter Company v. Zagloul*, 949 So. 2d 1189 (Fla. 1st DCA 2007) which provides guidance on the ability of a party to enforce the AIA arbitration provision after termination.

Factual Background

In the *Auchter Company* case, Zagloul and Auchter Company ("Auchter") entered into a contract for construction of a house. The contract documents consisted of the "Standard Form of Agreement Between Owner and Contractor" (AIA Document A111-1997) and "General Conditions of the Contract for Construction" (AIA Document A201-1997). Two months after Auchter obtained a certificate of occupancy on the house, Zagloul notified Auchter that the contract was terminated because of what he alleged as "substantial breaches of the contract" and subsequently filed suit on its claims.

In response to this suit, Auchter filed a motion to dismiss and/or compel mediation and/or arbitration and to stay the action. That motion was based on Articles 4.5.1 and 4.6.1

of the AIA General Conditions which required the parties to submit any "claims arising out of or related to the [c]ontract" to mediation and, if mediation failed, to binding arbitration.

Zagloul opposed the motion on the ground that the contract between the parties had been terminated and, as a matter of law, the mediation and arbitration provisions contained in the AIA General Conditions did not survive that termination. Zagloul relied principally on the decision in *Aberdeen Golf & Country Club v. Bliss Construction, Inc.*, 932 So. 2d 235 (Fla. 4th DCA 2005), which Zagloul asserted was binding on the trial court because it was the only Florida appellate decision construing the AIA dispute resolution clause.

In response Auchter stated that that *Aberdeen*

decision was not binding because the actual holding of that case was that the owner had waived its right to enforce the dispute resolution clause when it terminated the contract. Auchter argued that it had done nothing to waive its right to enforce the arbitration clause in this case. The trial court agreed with Zagloul and denied Auchter's motion.

Decision on Appeal

On appeal, the court first noted that the only issue to be decided was whether the dispute resolution clause contained in the AIA documents was "valid." The court then went through a careful analysis of the *Aberdeen* decision. In *Aberdeen* the parties entered into a standard AIA contract, substantively similar to the *Auchter* contract. The owner in Aberdeen

also attempted to terminate the contract before final completion. However, in *Aberdeen* the contractor filed suit and it was the owner who filed a motion to stay and compel arbitration. The contractor argued that the owner waived its right to enforce the arbitration clause when it terminated the contract. In *Aberdeen*, the trial court and the appellate court agreed holding

that the owner's actions had constituted a waiver of its right to compel arbitration.

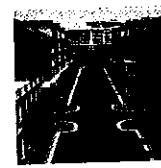
In *Auchter*, the court noted that the facts of *Aberdeen* were readily distinguishable from those of this case. Specifically, in *Aberdeen*, it was the owner, who terminated the contract, who was seeking the benefit of the dispute resolution clause. Although the owner also terminated the

contract in this case, it was the contractor who sought arbitration. Therefore, the court noted that the "equities" were far different than in *Aberdeen*.

The court also examined the language in *Aberdeen* where that court concluded that the AIA dispute resolution provisions were not intended to survive termination of the contract by either party. The *Auchter* court did not agree with the dicta in *Aberdeen* regarding the intent of the standard AIA contract. The court added the arbitration provision in the AIA contract does not require any type of "savings clause" to survive termination. In fact, in the court's view, it is well established that the duty to arbitrate does not end when a contract is terminated, so long as the disputed claims arise under the contract. In this case,

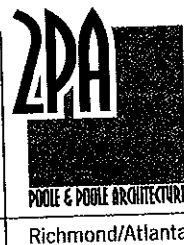


"These cases also highlight the practical importance of carefully complying with the terms of a contract especially when it comes to procedures concerning resolution of claims and termination."



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post-termination disputes were not expressly excluded from the scope of the AIA dispute resolution clause.

In reaching its decision, the court also relied upon the definition of the term "claims" in the AIA contract. The AIA definition of claims includes other disputes and matters in question between the "Owner and Contractor arising out of our relating to the contract." [emphasis added].

The court stated that this language was intended to be all-inclusive and did not attempt to limit "claims" to disputes arising before termination of the contract. The Florida Supreme Court previously interpreted

"As a matter of equity it seems appropriate that a party to a contract with an arbitration clause should be entitled to enforce that clause provided that they have followed the contract terms."

this language to encompass virtually all disputes between the contracting parties, including related tort claims in *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 637 (Fla. 1999). Based upon the factual distinctions in this case and the court's examination of the contract language, the court held that the AIA dispute resolution clause is intended to survive termination of the contract by a party.

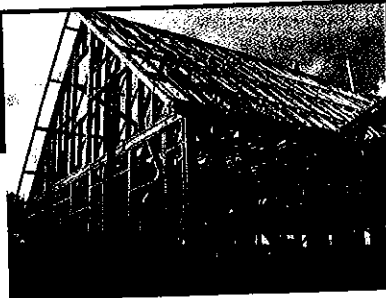
Comment

Arbitration clauses are contractual in nature and parties typically make an informed decision as to whether or not they should include such a clause in a construction contract. Therefore, as a matter of equity it seems appropriate that a party to a contract with an arbitration clause should be entitled to enforce that clause provided that they have followed the contract terms.

The *Aberdeen* and *Auchter* cases are important decisions based on the fact that they involved the AIA form documents which are so prevalent in the construction industry today. However, these cases also highlight the practical importance of carefully complying with the terms of a contract especially when it comes to procedures concerning resolution of claims and termination.

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