Landmark Ontario Superior Court of Justice Ruling on Arbitration Agreements and Unforeseeable Ground Conditions in Construction (CCDC)

July 8, 2024

The recent decision in **The Trustees of the Knox Presbyterian Church Manotick v. Oakwood Designers & Builders Inc.** issued by the Ontario Superior Court of Justice on 10 June 2024 provides a compelling examination of **arbitration agreements** and the **interpretation of construction contracts**. Justice Corthorn's ruling addressed critical issues related to **dispute resolution methods**, the potential **joinder of Hydro One**, and **unforeseeable ground conditions in construction claims**. This article highlights the key aspects of the judgment, focusing on the arbitration agreement within the CCDC contract and the construction portion related to unforeseeable ground conditions.

The Arbitration Agreement

The heart of the dispute between Knox Presbyterian Church and Oakwood Designers & Builders Inc. revolved around which dispute resolution method applied to their disagreements. The applicant argued that the CCDC14 Design-Build Stipulated Price Contract (CCDC Contract) governed the resolution process, which mandated **negotiation, mediation, and arbitration** as outlined in GC 8.1. Conversely, the respondent contended that the disputes should be resolved under Section 36 of the

Oakwood General Construction Contract (Construction Contract), which required court adjudication.

Justice Corthorn sided with the applicant, emphasizing that:

“Resolution of the existing disputes between the parties falls within the scope of the CCDC Contract. The parties must therefore follow the dispute resolution process prescribed in GC 8.1 of the CCDC Contract.”

This decision underscored the priority of the CCDC Contract’s broader terms over the more specific, day-to-day operational terms of the Construction Contract. The judge noted that the CCDC Contract, developed by the Canadian Construction Documents Committee, provided a comprehensive framework intended to cover general and broad disputes, including the unforeseen discovery of a buried Hydro One power line.

Analysis of the CCDC Contract

Justice Corthorn’s analysis of the CCDC Contract revealed that it was designed to handle significant project issues, such as unforeseen ground conditions, which were at the center of the dispute. The buried Hydro One power line discovered during excavation work was classified as a **“concealed or unknown condition”** under GC 6.4 of the CCDC Contract. This clause details the procedures for addressing unexpected conditions, including potential adjustments to the contract price.

The judge noted:

“The impact, or potential impact, of the discovery of a concealed or unknown condition on the Project site is specifically addressed in the CCDC Contract. The respondent relied on GC 6.4 to issue a notice of the resulting increase in the Contract Price.”

This reliance on the CCDC Contract for issuing a notice of increased costs further solidified the contract’s

applicability in resolving the disputes.

Joinder of Hydro One

The respondent’s attempt to include Hydro One as a necessary party to the arbitration was another critical aspect of the case. Oakwood Designers & Builders argued that since the Hydro One power line was a central issue, Hydro One should be involved in the arbitration process. However, the court ruled that this determination fell within the arbitrator’s jurisdiction.

Justice Corthorn stated:

“Whether Hydro One is a necessary party to the arbitration is a matter within the jurisdiction of the arbitrator. The request for a stay of the application should be dismissed.”

This decision reinforced the **competence-competence principle**, which gives precedence to the arbitration process and the arbitrator’s authority to decide on their jurisdiction and related matters.

Unforeseeable Ground Conditions in Construction Claims

The construction portion of the judgment highlighted the challenges posed by unforeseeable ground conditions. The discovery of the buried Hydro One power line, which halted the project until its relocation and repair, exemplified such challenges. The respondent’s subsequent demand for a $180,000 increase in the contract price due to these unforeseen conditions brought to light the importance of having robust mechanisms in place to address such issues.

GC 6.4 of the CCDC Contract, titled **“Concealed or Unknown Conditions”**, played a pivotal role in this context. It outlined the procedures for notifying the owner, investigating

the conditions, and making necessary adjustments to the contract. Justice Corthorn’s ruling emphasized that:

“GC 6.4 sets out the rights of the parties in the event of the discovery of concealed or unknown conditions at the Project site.”

This clause ensures that both parties have clear guidelines to follow, which can help mitigate disputes arising from unforeseen ground conditions.

Conclusion

The judgment in **The Trustees of the Knox Presbyterian Church Manotick v. Oakwood Designers & Builders Inc.** is a landmark case that highlights the importance of clearly defined arbitration agreements and the proper interpretation of construction contracts. By affirming the applicability of the CCDC Contract and addressing the issues surrounding the joinder of Hydro One and unforeseeable ground conditions, Justice Corthorn’s decision provides valuable insights for future construction disputes. The ruling underscores the necessity of adhering to agreed-upon dispute resolution processes and the critical role of comprehensive contractual frameworks in managing complex construction projects.

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