

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES POTTER, JR. and	§
VELDA C. JONES-POTTER,	§ No. 24, 2013
homeowners and residents of the	§
State of Delaware,	§ Court Below – Superior Court
	§ of the State of Delaware,
Defendants Below,	§ in and for New Castle County
Appellants,	§ C.A. No. 12L-09-022
	§
v.	§
	§
SC&A CONSTRUCTION, INC.,	§
a Delaware corporation,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: June 19, 2013

Decided: July 11, 2013

BEFORE STEELE, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 11th day of July, 2013, it appears to the Court that:

1) The defendants-appellants, Charles Potter, Jr. and Velda C. Jones-Potter (collectively, the “Potters”), appeal from a Superior Court dismissal of their counterclaim for breach of contract against the plaintiff-appellee, SC&A Construction Inc. (“SC&A”).

2) The Potters raise one claim on appeal. The Potters claim that the Superior Court abused its discretion in finding SC&A could enforce an alternative dispute resolution agreement (“ADR provision”) against Mr.

Potter when Mr. Potter was not a signatory to the contract containing the ADR provision.

3) SC&A moved to dismiss the appeal pursuant to Supreme Court Rule 29(b), claiming the Potters are pursuing an interlocutory appeal without following the requirements of Rule 42.

4) SC&A performed construction services on the Potters' home. The work was done pursuant to a contract signed by the contractor and Mrs. Potter, but not by Mr. Potter. The Potters did not pay SC&A the full amount owed under the contract, which lead to SC&A filing a mechanics lien in Superior Court.

5) Article 21 of the contract contains the ADR provision, which covers any “[c]laims, disputes and other matters in question arising out of or relating to this Contract.” The contract expressly exempts mechanics liens from the ADR provision.¹ As to the method of ADR, the contract provides that the parties first “shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association.” The contract then provides:

If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any claim, subject to, but

¹ “If a claim, dispute or other matter in question relates to or is the subject of a mechanic’s lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.”

not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association

6) The first clause above—“If the parties have selected arbitration”—refers to Section 5.1 of the contract, titled “Binding Dispute Resolution.” This section allows the parties to the contract to select one of three options: arbitration, litigation in a court of competent jurisdiction, or “Other.” The contract has an “X” next to the choice, “Arbitration pursuant to Section 21.4 of this Agreement.”

7) The Potters filed a counter-claim for breach of contract to SC&A’s mechanics lien action. SC&A moved to dismiss the counterclaim, arguing any breach of contract claim is covered by the ADR provision of the contract. The Superior Court granted the motion to dismiss.² The Potters then filed this appeal. The mechanic’s lien stayed on the docket in Superior Court, but no further action has been taken as of the date of this memo.

8) Although the Potters’ counterclaim has been dismissed, the mechanic’s lien action continues in Superior Court. “When a civil action involves multiple claims and multiple parties, a judgment regarding any claim or any party does not become final until the entry of the last judgment that resolved all claims as to all parties unless an interlocutory ruling as to a

² *SC&A Construction Inc. v. Potter*, C.A. 12L-09-022, slip op. at 7 (Del. Super. Dec. 21, 2012).

claim or party is certified pursuant to Superior Court Rule 54(b).”³ The Potters filed their counter claim in response to the petition for a mechanics lien. Though the counter claim was dismissed, the mechanics lien action continues. Accordingly, this appeal is interlocutory and has not complied with the requirements of Supreme Court rule 42.

NOW, THEREFORE, IT IS HEREBY ORDERED that this interlocutory appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Harrison v. Ramunno*, 730 A.2d 653, 653-54 (Del. 1999).