

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

NEW VIEW INC.,

Plaintiff,

vs.

CASE NO. 5:11-cv-174/RS-CJK

**MCCRORY BUILDING CO. INC.
and TRAVELERS CASUALTY &
SURETY COMPANY OF AMERICA,**

Defendants.

ORDER

Before me are Plaintiff's Motion to Compel Arbitration (Doc. 9), and Defendant Travelers' Response in Opposition (Doc. 25). Defendant McCrory Building has not filed a response.

Plaintiff is a subcontractor that preformed services for Defendant McCrory Building on a construction project in Panama City Beach. Defendant Travelers provided a payment bond on behalf of Defendant McCrory Building for this project (Doc. 1, Attach.1, p. 3-4). Plaintiff asserts that the contract between Plaintiff and Defendant McCrory Building contained an arbitration provision (Doc. 9, p. 2) and that Defendant Travelers should be compelled to arbitrate according to the terms of this contract. Defendant Travelers was not a party to this contract.

"A bond is regarded as a contract and is to be construed according to the fair import of the language used." It is "construed to give true effect and meaning to its terms

and conditions and to give effect to the reasonable intention of the parties.” EMMETT C. SOLE, *THE LAW OF PAYMENT BONDS* 76 (Kevin Lybeck and H. Shreves ed., ABA) (1998). Here, the payment bond (Doc. 25, Attach. 1) does not contain an arbitration provision. “The failure to include any reference to arbitration as part of the parties' primary agreement is substantial evidence of their intent not to require arbitration of claims.” *Int'l Underwriters AG & Liberty Re-Insurance Corp., S.A. v. Triple I: Int'l Invs., Inc.*, 533 F.3d 1342, 1345 (11th Cir. 2008). The absence of an arbitration provision is dispositive and Defendant Travelers cannot be bound by the terms of a subcontract that it was not a party to.

IT IS ORDERED:

1. The Motion to Compel Arbitration (Doc. 9) is **DENIED as to Defendant Travelers.**
2. The Motion to Compel Arbitration (Doc. 9) is **GRANTED as to Defendant McCrory Building.** They shall complete arbitration not later than November 30, 2011, and shall file status reports every 45 days.
3. The case is stayed as to the claims against Defendant McCrory Building.

ORDERED on June 9, 2011.

/S/ Richard Smoak
RICHARD SMOAK
UNITED STATES DISTRICT JUDGE