

**IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**TRITON CONSTRUCTION, INC.,
a West Virginia Corporation,**

Plaintiff,

v.

CIVIL ACTION NO. 21-C-7

Presiding Judge: H. Charles Carl, III

**Resolution Judges: Michael D. Lorensen
and Jennifer P. Dent**

**GANNETT FLEMING, INC.,
a Delaware Corporation, and
MONONGAHELA CONSERVATION DISTRICT,
a subdivision of the State of West Virginia,**

Defendant.

**ORDER GRANTING DEFENDANTS' MOTION TO BIFURCATE
AND STAY DISCOVERY ON CERTAIN CLAIMS**

This matter comes before the Court this 29th day of September, 2022, upon Monongahela Conservation Agency's ("MCD") Motion to Bifurcate and Stay Discovery on Certain Claims, which was filed on June 27, 2022, and Gannett Fleming, Inc.'s ("GFI") Motion to Bifurcate and Stay Discovery on Certain Claims incorporating MCD's Motion of the same name filed on June 29, 2022, both of which came on for hearing before the undersigned on August 23, 2022. On July 1, 2022, Triton Construction, Inc. ("TCI") filed its response to MCD and GFI's aforementioned motions. On July 1, 2022, the Court entered a Briefing Order providing that the moving parties provide a proposed order, TCI file its response by July 18, 2022, and moving parties file any rebuttal memoranda by July 28, 2022. Argument was heard on August 23, 2022 before the undersigned via Microsoft Teams.

The Court has carefully considered the Motions, the Memoranda filed, and pertinent legal authority. In support of its decision, the Court makes the following findings of fact and conclusions of law:

FACTS

1. This matter stems from a dispute that has arisen from the rehabilitation of a high hazard dam known as Upper Deckers Creek Site 1 Dam.

2. Plaintiff, TCI, was the successful bidder on the project and entered into a contract to construct the project with the MCD. After completion of the project, TCI filed suit against GFI and MCD.

3. During the pendency of this suit, TCI filed a *Second Amended Complaint*, alleging nine separate causes of action against the two defendants in this action, GFI and MCD. *See Second Amended Complaint*. The *Second Amended Complaint* is the operative complaint at present time.

4. TCI is currently asserting the following claims: Professional negligence Against GFI, Breach of Warranty Against GFI, Breach of Warranty Claim Against MCD, Breach of Contract Against MCD, Promissory/Equitable Estoppel, Quantum Meruit Claim Against MCD, Fraud in the Inducement to Contract, Fraud in the Inducement of Modification No. 7, and Violation of the Superior Knowledge Doctrine. *See Second Amended Complaint*.

5. MCD filed in response its *Monongahela Conservation District's Answer to Second Amended Complaint, Affirmative Defenses and Counterclaim*, which asserted various affirmative defenses and its own counter claims for Breach of Contract and Breach of Contract for Modification No. 7.

6. GFI filed its Answer to Second Amended Complaint along with Affirmative Defenses.

7. In the *Second Amended Complaint*, TCI has asserted two separate claims of fraud in the inducement against Defendants: 1) Fraud in the Inducement of Contract, and 2) Fraud in the Inducement of Modification No. 7.

8. In response, Defendants have denied these claims and asserted affirmative defenses of the statute of limitations.

9. Based upon the affirmative defense of the statute of limitations, a determination would need to be made first as to whether or not TCI could assert the two fraud in the inducement claims set forth in Count VII of the *Second Amended Complaint*, and fraudulent inducement into Modification No. 7, as stated in Count VIII of the *Second Amended Complaint*.

10. If it is determined that the statute of limitations expired prior to TCI asserting the fraudulent inducement claims, a legal question arises as to the scope of the waiver contained in Modification No. 7.

11. If, however, the claims of fraud in the inducement are not time barred, a determination would then need to be made as to whether or not TCI was fraudulently induced to enter into the contract and into Modification No. 7. This requires TCI to establish fraud for both contracts by clear and convincing evidence.

12. Depending upon the determination made by a jury or the Court on the fraudulent inducement claims, some of TCI's additional claims may be dismissed thereby making the presentation of evidence regarding its additional claims unnecessary.

13. If a determination is made that TCI was fraudulently induced to enter into either the initial contract or Modification No. 7, the contract does not become void, but rather *voidable*.

Coffman v. Viquesney, 76 W. Va. 84, 84 S.E. 1069 (2019).

14. This would therefore require TCI to affirmatively state its position as to the contract or modification, which would dictate which claims TCI and/or defendants could proceed on.

15. Conversely, if TCI fails on its fraud in the inducement claims, a question then arises as to the validity and scope of the waiver contained in Modification No. 7.

16. If valid, Modification No. 7 could serve to bar the other claims of TCI thereby making evidence regarding those claims unnecessary and a waste of judicial time and resources.

17. Consequently, the presentation and discovery of evidence on every alleged cause of action would be a waste of judicial resources and the resources of the parties.

18. The discovery in this matter is significant. So far, GFI has produced over 330,000 pages of documents in discovery; TCI over 28,000 pages; and MCD over 12,000 pages.

CONCLUSIONS OF LAW

19. Rule 42 of the West Virginia Rules of Civil Procedure permits a trial judge to bifurcate related causes of action:

(c) *Separate trials*. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues[.]

20. Under this Rule, a trial court has discretion to sever claims in furtherance of convenience or economy, or to prevent prejudice. *Anderson v. McDonald*, 170 W. Va. 56, 61, 289 S.E.2d 729, 735 (1982).

21. “The burden of persuasion is placed upon the shoulders of the party moving for bifurcation. A trial judge may insist on an explanation from the moving party as to why bifurcation

is needed. If the explanation reveals that the integrity of the adversarial process which depends upon the truth-determining function of the trial process would be harmed in a unitary trial, it would be entirely consistent with a trial court's authority to grant the bifurcation motion." *State v. LaRock*, 196 W. Va. 294, 470 S.E.2d 613 (1996).

22. Further, the moving party's explanation regarding the necessity of bifurcation must also include the justification criteria enunciated in Syllabus 6 of *Bennett v. Warner*, 179 W. Va. 748, 372 S.E.2d 920, 926 (1988):

Parties moving for separate trials of issues pursuant to West Virginia Rule of Civil Procedure 42(c), or the court if acting *sua sponte*, must provide sufficient justification to establish for review that informed discretion could have determined that the bifurcation would promote the recognized goals of judicial economy, convenience of the parties, and the avoidance of prejudice, the overriding concern being the provision of a fair and impartial trial to all litigants.

23. There are both claims and affirmative defenses that require both legal and factual determinations before many of the claims can be properly considered.

24. The nature of the claims involved are undeniably complicated as they stem from the rehabilitation of a high hazard dam, which will require the presentation of significant scientific and technical data.

25. This case is also complicated in that there are many claims and defenses that require determination by trier of fact or law first in order for other claims to be viable.

26. Separating these claims will prove to be economical and will avoid a waste of judicial time and resources.

27. Having a singular trial, which is anticipated to last eight days, on all issues would use significant judicial resources due to the complex nature of the issues to be tried, which would be wasted depending on the resolution of these issues.

28. Plaintiff has argued that defendants have not met their burden by articulating the judicial resources that would be saved. The Court, however, finds this unpersuasive as it is clear that a trial and/or discovery related to the fraud claims will incur substantially less time and resources of everyone. The Court was further persuaded by the fact that the fraud claims would be separated by the much more technical non-fraud claims, which will require the use of engineering experts and more expense to the parties.

29. Therefore, bifurcating the case and having these matters determined first would therefore promote judicial economy and prevent the potentially unnecessary expenditure of judicial resources, as well as the resources of all involved.

30. Limiting discovery to just the Fraud in the Inducement claims will narrow the discovery in this matter and prevent the expense of potentially unnecessary discovery into claims that will not survive if TCI is not successful on its Fraud and Inducement claims.

31. Also, limiting discovery to the bifurcated issues will also limit review of produced documents to only those that are relevant to the Fraud in the Inducement claims, which is clearly more economical.

32. Due to the nature of the claims and defenses asserted in this matter, it would promote judicial economy for this case to be bifurcated where the matters of the statute of limitations for the fraud in the inducement claims, a determination on the fraud in the inducement claims, and the validity of the waiver contained in Modification No. 7, were decided first prior proceeding on the other claims asserted by TCI and MCD.

33. Plaintiff also claims that if discovery on the remaining issues is stayed, then in the event Plaintiff's case proceeds past the initial stage, discovery may become duplicative as witnesses will likely be deposed twice.

34. While it is likely true that individuals will need to be deposed twice, the initial depositions will be significantly shorter. Further, when weighed against the prospect of not having the lengthy, technical depositions the non-fraud claims would require, the Court finds Plaintiff's argument unpersuasive.

35. The only prejudice alleged by Plaintiffs is delay in time, which would affect the Defendants as well. While there may be a short delay as a result of bifurcation, the delay does not equate to prejudice.

WHEREFORE, the Court **GRANTS** Defendants' Motion to Bifurcate and Stay Discovery on Certain Matters and **ORDERS** the following:

1. The matter will proceed as to Counts VII and VIII related to the fraudulent inducement claims; and

2. Discovery is **STAYED** on all matters not related to Plaintiff's Counts related to fraud in the inducement;

3. The Court ruled at the hearing that within ten (10) days, the parties are to meet and confer to develop scheduling orders for 1) the fraud claims, and 2) the remaining claims;

4. The parties did do so and submitted said proposed scheduling orders to the undersigned for entry; and

5. The Court notes the stay of discovery, which was ruled on from the bench on August 23, 2022, did not apply to the site inspection which was scheduled for August 31, 2022 at 1:30 p.m.

6. Plaintiff's objections are hereby noted.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED the 29th day of September, 2022.



JUDGE H. CHARLES CARL, III
WEST VIRGINIA BUSINESS COURT DIVISION

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