

**Pecker Iron Works, LLC v Beys Speciality, Inc.**

2019 NY Slip Op 32883(U)

September 27, 2019

Supreme Court, New York County

Docket Number: 651128/2016

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

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PECKER IRON WORKS, LLC,

Plaintiff,

Index No.: 651128/2016

-against-

Mot. Seq. No. 002

BEYS SPECIALITY, INC., and  
FEDERAL INSURANCE COMPANY,

Defendants.

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**MELISSA A. CRANE, J.S.C.:**

Beys Specialty Inc. (“Beys”) entered into a contract (the “Prime Contract”) with The Hudson River Park Trust to perform certain construction work in connection with a construction project known as “Section 5 – Pier 53 Firehouse, Contract No. C4346.” On or about August 14, 2009, Beys entered into a subcontract (the “Subcontract”) with Pecker Iron Works (“Pecker”) to install steel in connection with the Project. Thereafter, Beys and Pecker entered into two addendums to the Contract for additional work that Pecker was to perform. The total value of the Subcontract and its addenda equaled \$594,149.00. It is undisputed that, to date, Beys has paid Pecker \$542,283.00. Pecker claims that it is owed \$52,777.99 in connection with five alleged extra work invoices. The extra work invoices are the subject of this motion and cross motion.

As far as the court can discern, plaintiff appears to be moving for summary judgment on its invoices corresponding to its extra work. Article 8 of the Subcontract between the parties controls change orders. That provision states:

ARTICLE 8 CHANGES IN THE WORK  
8.1 Change Orders

(a) Contractor at any time, in any quantity or amount, without notice to the sureties and without invalidating or abandoning the contract, may add or delete, modify or alter the Work to be performed under this Agreement including, without limitation, ordering changes or extra work. ***Subcontractor shall not perform any change in the Work unless it has received a directive signed by George Kougentakis or Anna Kougentakis.*** Subcontractor shall be obligated to perform changed work promptly in conformity with any directive issued in accordance therewith. Where the Contractor does not acknowledge that the Work in question is extra work or a change in Work requiring additional compensation, the Subcontractor shall not cease work but shall perform said work as directed by the Contractor, in writing.

(b) ***All change orders shall be prepared, signed and issued through the Contractor.*** Change orders will provide for signature and acceptance by Subcontractor, but such signature is not required for the effectiveness of any change order. Subcontractor shall perform said change order work as directed by Contractor.

(c) Whenever the Subcontractor believes that it is or will be entitled to additional compensation for extra work, it must provide Contractor with written notice of the claimed extra work within ten (10) work days after the Subcontractor has knowledge or should have knowledge of the event giving rise to the extra work.

(d) Contractor shall have no liability and no adjustment will be made for any change order which accrued more than ten (10) days prior to the filing of such a notice with the Contractor. (e) After giving Contractor notice of the claimed extra work, Subcontractor must keep daily records of all labor, material and equipment costs and hours incurred in connection with the claimed extra work.

(f) In the event of a dispute concerning Subcontractor entitlement to a change order resulting from instruction by or circumstances created by the Owner, Subcontractor shall be required to follow any dispute resolution procedures set forth in the Prime Contract, and shall be bound by any determinations made thereunder, except that Subcontractor's time for making any claim and presenting any damage calculations shall be at least five business days before the date that the Prime Contract requires Contractor to present same to the Owner.

(g) In connection with any disputes and/or claims pursuant to Article 8.1(f), Contractor agrees to allow the Subcontractor to use

the Contractor's name in prosecuting claims pursuant to the provisions of the Contract Documents or as provided by law for the prosecution of such claims. The Contractor further agrees, upon reasonable notice as provided in the Contract Documents, to include any claims of the Subcontractor in any action brought by the Contractor against the Owner. The Subcontractor shall bear all costs and expenses, including legal fees, associated with the pursuit of any claim and/or dispute under the terms of the Contract Documents. Nothing herein shall obligate Contractor to commence an action or proceeding in court against the Owner on Subcontractor's behalf.

***(h) All change orders, and any subsequent modifications, changes, additions or deletions, must be in writing and signed by George Kougentakis or Anna Kougentakis of Contractor. This subcontract provision may not be modified orally. The Subcontractor understands that it is not entitled to rely upon the oral or written direction for change order of any other persons employed by the Contractor. The Subcontractor further understands that it is not entitled to rely on the written or oral direction of the Owner or any other persons, absent written direction from Contractor. Any work done without the written approval of George Kougentakis or Anna Kougentakis of Contractor shall be at the sole risk of the Subcontractor and without any further liability of the Contractor for any payment thereof.***

(i) The amount to be paid for any changes or extra work shall be determined by the methods set forth in the Prime Contract. In the event that the Prime Contract does not provide specific methods, the parties shall negotiate a mutually acceptable price based on the actual cost of performing the work in question.

(see nyscef edoc 47, section 8.1, p.19-20, *emphasis added*). It could not be more clear that Pecker would not receive payment unless and until it had the requisite signatures. Pecker does not dispute that the language of subsection 8.1 requires these signatures. Instead, it goes into a long, convoluted argument that is quite difficult to follow and largely irrelevant. Never does plaintiff explain how the court can look beyond the clear terms of an unambiguous contract. That Pecker may have performed the extra work at the direction of the owners is irrelevant as it

directly contradicts provision 8.1(h), that states “Subcontractor further understands that it is not entitled to rely on the written or oral direction of the Owner.” That Tony Hamilakis, a “project executive” with Beys, instructed George Kougentakis and Anna Kougentakis not to sign for the extra work is equally irrelevant. Accordingly, the court denies plaintiff’s motion for partial summary judgment.

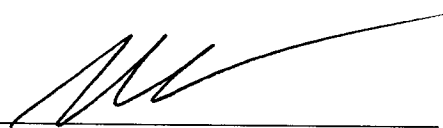
Conversely, the court grants defendant Bey’s cross motion for summary judgment dismissing any claims based on the invoices purporting to reflect the extra work for the same reason (i.e. failure to comply with the contract between the parties). The court directs the parties to refrain from putting forth legal argument via affidavits in any future motion. Instead, the court directs legal briefs complete with table of contents and table of authorities.

Accordingly, it is

**ORDERED** that the court denies plaintiff’s motion for partial summary judgment and grants defendant’s cross motion for partial summary judgment.

Dated: 9-27, 2019

ENTER:

  
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HON. MELISSA A. CRANE, J.S.C.

**HON. MELISSA A. CRANE**  
J.S.C.