



A KCA Construction Industry Article of Interest:

“Plumber’s Work,” Now Clear as Mud

By Tom Williams, Esquire

One would think that experienced contractors, construction managers, and project engineers could easily explain what plumbing work is. For sure, any first-year plumbing apprentice could precisely recite a definition of plumbing work, right? For just as surely as water flows downhill, it is a plumber who installs sewer, water, and drain pipes. Well, a recent Pennsylvania trial court decision involving the application of the Commonwealth's Separations Act shows that it is not that simple. A plumbing contractor, Wheels Mechanical Contracting and Supplier, Inc. (“Wheels Mechanical”), recently brought an action seeking an injunction from the Allegheny County Court of Common Pleas against the West Jefferson School District and Nello Construction, its general contractor, on the School District’s new high school project. The essence of the lawsuit is the issue of whose prerogative it is to perform certain exterior plumbing work on the project, the plumbing prime contractor, Wheels Mechanical, or Nello, the general trades contractor? The Pennsylvania Separations Act, the application of which was at the center of this dispute, requires in part that “the architect, engineer, or other person preparing specifications... prepare separate specifications for the plumbing, heating, ventilating, and

electrical work... receive separate bids upon each of the said branches of work, and to award the contract for the same to the lowest responsible bidder for each of said branches.”

Wheels Mechanical, along with Plumbers Local Union Number 27, which intervened in the case, argued that the School District and its architect and engineers violated the Pennsylvania Separations Act by excluding from the prime plumbing contract plumbing work performed outside the building including installation of sanitary sewer, storm sewer, and water service lines. The challenge for the court was that the Separations Act does not include a definition of what “plumbing work” is.

Over the course of three days of hearings some very fine lawyers and very experienced construction professionals on both sides of this issue provided evidence seeking to persuade the judge that the work in question was clearly and properly part of their respective client’s scope of work. Ultimately the trial judge granted the injunction in favor of Wheels Mechanical and ruled that the work in question was plumbing work to be included in the plumbing contractor’s contract. In reaching this conclusion the judge placed great weight on the International Plumbing Code, 2009 edition, which has been adopted in Pennsylvania as part of the Uniform Construction Code (34 Pa. Code § 403.1). The judge noted that the Allegheny County Plumbing Code also adopted the International Plumbing Code (IPC 2009) and the definition of plumbing work contained therein. The definition of “plumber’s work” contained in the Allegheny County Plumbing Code which the judge relied upon states in part “... no person, other than a licensed master plumber, a licensed journeyman plumber in the employ of a licensed master plumber, a registered plumbing apprentice in the employ of a licensed master plumber, or a bona fide owner presently occupying an existing single-family building shall install, alter, or make connections with any sewer, water, drain, or any pipe connected therewith; or alter the

location of any existing plumbing fixtures, water distribution piping system or sewer drainage system.”

Many who attended the hearing, and many more readers of Judge O'Reilly's decision, are perplexed by the judge's conclusion and reliance upon the definitions set forth in the UCC and Allegheny Plumbing Codes. Folks who have for decades worked on public projects have always presumed, in keeping with a long-standing (but unwritten authority) that “plumber’s work,” in the context of public contracting, ends at a point 5 feet from the building and does not extend beyond 5 feet outside of the building envelope. In other words, the plumbing prime contractor owned all of the piping, connections, drains, and fixtures related to water distribution and sewer drainage system within that area; and the general contractor, along with its subcontractors, owned all such work beyond that area. At least one judge has rejected this time-honored convention and has declined to be guided by it.

Judge O’Reilly, in granting the injunction in favor of Wheels Mechanical, among other things, ordered the School District to direct its construction manager to issue a change order to the plumbing contractor, Wheels Mechanical, transferring all of the remaining exterior water and sewage piping work to Wheels Mechanical's contract.

The School District has recently filed an appeal of the decision with the Commonwealth Court. We will soon see how that Court defines “plumber’s work.”

end

Tom Williams is an attorney with the law firm of Reager & Adler, PC in Camp Hill, Pennsylvania. Tom has enjoyed representing clients in the construction industry for more than 20 years. He can be reached at 717-763-1383 or twilliams@reageradlerpc.com.