

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2009

HARPER MECHANICAL, LLC,

Appellant,

v.

Case No. 5D08-857

HUNT CONSTRUCTION GROUP,
INC., ET AL.,

Appellees.

/

Opinion filed November 20, 2009

Appeal from the Circuit Court
for Orange County,
Renee A. Roche, Judge.

Jamie Billotte Moses and James M. Talley
of Fisher, Rushmer, Werrenrath, Dickson,
Talley & Dunlap, P.A., Orlando,
for Appellant.

Charles J. Cacciabeve of Carlton Fields,
P.A., Orlando, Jason A. Perkins, Sylvia H.
Walbolt, E. Kelly Bittick, Jr., Wm. Cary
Wright and Christine R. Davis of Carlton
Fields, P.A., Tampa, for Appellees.

TORPY, J.

In this construction payment dispute case, Appellant, a mechanical subcontractor, seeks review of the summary judgment entered in favor of Appellees, the

contractor¹ and its surety. Although the judgment is final as to the surety, it is not final as to the contractor because a counterclaim remains pending that arises from the same contract. Therefore, we cannot address the issues between Appellant and the joint venture or the individual corporations comprising the joint venture, including the propriety of the lower court's order denying Appellant's motion to amend its complaint against the joint venture.

As for the remaining issues, we affirm the summary judgment. We conclude that the document executed by Appellant, under oath, after it had concluded its work on the project, is an unambiguous acknowledgement of payment for all of the work that Appellant performed under the contract, including, by its express terms, changes and extras. The document also specifically released "any and all claims, rights, or causes of action whatsoever arising out of or in the course of the work performed" on the project. Appellant advanced no facts or theory to avoid the enforcement of this unambiguous document.²

AFFIRMED in part; DISMISSED in part.

LAWSON, J., concurs.

GRIFFIN, J., dissents without opinion.

¹ The contractor in this case was a joint venture consisting of Hunt Construction Group, Inc., The Clark Construction Group, Inc. and Construct Two Construction Managers, Inc.

² Appellant's proposed amendment to its reply to Appellees' answer would have been futile and was properly denied.