

DOCKET NO. LLI-CV15-5007869-S

KENT JOHNSON

vs.

HRP ASSOCIATES INC., et al.

) **SUPERIOR COURT**

)

) **J.D. OF LITCHFIELD**

)

)

)

) **DECEMBER 2, 2015**

MOTION TO STAY PROCEEDINGS PENDING ARBITRATION

The Defendants, HRP Associates Inc. (“HRP”), Scot Kuhn, Michael Gaughan and Zoe Belcher, hereby move the Court for an order to stay proceedings in this matter, pending arbitration, in accordance with the Parties’ written agreement.

As demonstrated below, the claim in this case is subject to a broadly-worded arbitration clause requiring the parties to settle any claims by arbitration before a member of the American Arbitration Association. The court should stay these proceedings pending arbitration because, as provided under well-established case law, it cannot be said with positive assurance that the claim is not subject to the relevant arbitration clause.

I. FACTUAL BACKGROUND

The Plaintiff, Kent Johnson (“Johnson”), commenced this action against the Defendants by Complaint dated October 6, 2015 (the “Complaint”) in which he asserts a claim for breach of contract. Johnson’s claim is subject to arbitration under a “Terms and Conditions” agreement, signed by him on December 3, 2013 (the “Agreement”). A copy of the Agreement is attached to the Affidavit of Howard Hurd (Exhibit A, the “Hurd Affidavit”).

In the Complaint, Johnson alleges that the Defendants contracted with him for environmental services. Complaint, ¶ 1. Johnson also alleges that he paid a retainer “in a contract action.” Complaint, ¶¶ 2 & 3. He further alleges that “[a] letter headed ‘Termination of Services’ from the Defendant dated March 6, 2015 notified the Plaintiff that the Defendant ‘will no longer be rendering environmental services.’” Complaint, ¶ 4. Finally, Johnson alleges that the “Contracted services have not been completed.” Complaint, ¶ 5.

The contractual relationship between Johnson and HRP is specifically defined in a proposal, dated December 2, 2013 (the “Proposal”) and the Agreement. Paragraph 9 of the Agreement provides the following broad arbitration provision:

ARBITRATION: Any controversy or claim relating to or arising out of this Agreement, or the breach thereof, shall be settled by Arbitration in the City of Hartford, Connecticut, in accordance with the then current rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any claim brought by the Client against HRP shall be brought no later than one year after the date of substantial completion of HRP’s services hereunder or the expiration of the applicable statute of limitations, whichever is earlier.

The Proposal and Agreement creates and generally governs the relationship between Johnson and the Defendants. Therefore, as this lawsuit arises from that business relationship, it is subject to the arbitration provision set forth in Paragraph 9 of the Agreement.

III. ARGUMENT

Johnson's claims are within the scope of the Agreement's arbitration provision. Accordingly, this Court should stay the proceedings until the matters at issue in this case have been heard in arbitration before a member of the American Arbitration Association.

A. The Presumption of Arbitrability.

Connecticut courts recognize a strong public policy favoring arbitration as it avoids "the formalities, delay, expense and vexation of ordinary litigation." *Board of Education of the Town of East Haven v. East Haven Education Association*, 66 Conn. App. 202, 207, 784 A.2d 958 (2001). Conn. Gen. Stat. § 52-409 provides that:

If any action for legal or equitable relief or other proceeding is brought by any party to a written agreement to arbitrate, the court in which the action or proceeding is pending, upon being satisfied that any issue involved in the action or proceeding is referable to arbitration under the agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in compliance with the agreement, provided the person making application for the stay shall be ready and willing to proceed with the arbitration.

In determining whether parties to a contract have agreed to arbitrate a dispute, the Connecticut Supreme Court has held that the "positive assurance" test set out by the United States Supreme Court in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347 (1960), must be applied. *Board of Education v. Frey*, 174 Conn. 578, 582, 392 A.2d 466 (1978). "[J]udicial inquiry . . . must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance . . . An order to

arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.” *Id.* (internal quotation marks omitted). “[A]rbitration agreements should be construed as broadly as possible. Any doubt concerning the scope of arbitrable issues is to be resolved in favor of arbitration. The existence of a broad agreement to arbitrate creates a presumption of arbitrability which is only overcome if it may be said *with positive assurance that the arbitration clause is not susceptible of an interpretation that [it] covers the asserted dispute.*” *Hottle v. BDO Seidman, LLP*, 74 Conn.App. 271, 277-78, 811 A.2d 745 (2002) (discussing the federal policy favoring arbitration) (emphasis in original) (citations omitted).

B. The Contract Between the Parties Contains a Broad and Enforceable Arbitration Clause.

Paragraph 9 of the Agreement contains a clear and broadly-worded arbitration clause whereby the parties agreed that:

Any controversy or claim relating to or arising out of this Agreement, or the breach thereof, shall be settled by Arbitration in the City of Hartford, Connecticut, in accordance with the then current rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

This language unambiguously provides that “*any* controversy or claim relating to or arising out of” the Agreement “shall be” arbitrated. Through the Complaint, Johnson seeks the return

of a retainer paid to HRP in connection with the Agreement; therefore, Johnson's claim arises out the business relationship established and governed by that Agreement.

In the Complaint, Johnson essentially alleges that he paid a retainer to HRP in connection with the Parties contract for environmental services and that HRP terminated the contract before completing services and without returning the retainer fee. See Complaint, ¶¶ 1-5. The plain terms of the Agreement require that "[a]ny controversy or claim relating to or arising out of" the Agreement must be settled by arbitration. Agreement, ¶ 9. It is therefore clear that any claim based on a breach of that contract must be referred to arbitration.

At a minimum, it certainly cannot be said with *positive assurance* that Johnson's claim is not subject to the arbitration provision. Therefore, this Complaint should be submitted to arbitration. See *SS&C Technologies, Inc. v. Columbus Circle Investors*, 2004 WL 2943115, at *1 (Conn. Super. Nov. 12, 2004) (stating that because the courts favor arbitration, they "will defer to this alternative method of dispute resolution if the contractual arbitration provisions fall within the grey area of arbitrability").¹

CONCLUSION

The language contained in the Agreement's arbitration provision is plain: "*any* controversy or claim relating to or arising out of" the Agreement "shall be settled by Arbitration." Agreement, ¶ 9 (emphasis added). It is clear that Johnson's claim is either explicitly based on the Agreement or arise from the business relationship created and

¹ A copy of this case is attached hereto as Exhibit B.

governed thereby. Therefore, it cannot be said with *positive assurance* that the claims are not subject to this broadly-worded arbitration clause. Accordingly, the Court should stay the instant proceedings pending arbitration of the Plaintiff's claims in accordance with the clear terms of the Agreement.

**THE DEFENDANTS,
HRP ASSOCIATES INC., SCOT KUHN,
MICHAEL GAUGHAN AND ZOE BELCHER**

By: /s/ Mary E.R. Bartholic
Mary E.R. Bartholic
for Cohn Birnbaum & Shea PC
Their Attorneys
100 Pearl Street, 12th Floor
Hartford, CT 06103
Telephone: (860) 493-2200

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Stay Proceedings Pending Arbitration has been sent by First Class mail, postage prepaid, on this 2nd day of December, 2015, to the following:

Kent Johnson
233 East Main Street
Torrington, CT 06790

/s/ Mary E.R. Bartholic
Mary E.R. Bartholic

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EXHIBIT A

DOCKET NO. LLI-CV15-5007869-S

KENT JOHNSON

vs.

HRP ASSOCATES INC., et al.

) SUPERIOR COURT
)
) J.D. OF LITCHFIELD
)
)
)
) DECEMBER 3, 2015

AFFIDAVIT OF HOWARD HURD

Howard Hurd, having been duly sworn, hereby deposes and says:

1. I am over the age of eighteen (18) years and believe in the obligations of an oath.
2. I am the Chief Operating Officer of HRP Associates, Inc. ("HRP"). I make this Affidavit based on my own personal knowledge and upon review of the business records of HRP.
3. A true and accurate copy of the December 2, 2013 contract between Kent Johnson and HRP is attached hereto as Exhibit 1, which includes a proposal for services and a Terms and Conditions agreement.


Howard Hurd

Subscribed and sworn to before me, this 1st day of December, 2015.



Notary Public
My commission expires: 05/31/2016

EXHIBIT 1

HRP Associates, Inc.

Creating the Right Solutions Together

December 2, 2013

Mr. Kent Johnson
Compatible Computers
233 East Main Street
Torrington, CT

**RE: PROPOSAL TO COMPLETE SOIL REMEDIATION AND POST-
REMEDIATION GROUNDWATER MONITORING, 233 EAST MAIN STREET,
TORRINGTON, CONNECTICUT (HRP #P360.PR)**

Dear Mr. Johnson:

HRP Associates, Inc. (HRP) is pleased to submit this proposal to complete remediation at the above-referenced site. An Environmental Condition Assessment Form (ECAAF) and Form III were filed for the site under the Connecticut Transfer Act (C.G.S. Section 22a-134 et seq., as amended) on February 8, 2012. It is our understanding that the Connecticut Department of Energy and Environmental Protection (CT DEEP) is allowing the property to be verified by a Licensed Environmental Professional (LEP). This scope of work is required to bring the site into compliance with the Connecticut transfer laws following that sale.

The proposed scope of work is detailed below.

SCOPE OF SERVICES

Task 1: Remedial Action Plan

Since this work is being conducted after the sale which entered the site into the Property Transfer Program, a Remedial Action Plan (RAP) must be prepared and submitted to the CT DEEP prior to work. Under this task, HRP will prepare a RAP detailing the remediation that will be conducted at the site. The RAP will describe the scope of the proposed remediation.

CONNECTICUT

Corporate Headquarters
197 Scott Swamp Road
Farmington, CT 06032
800-246-9021
860-674-9570
FAX 860-674-9624

999 Oronoque Lane
Second Floor
Stratford, CT 06614
203-380-1395
FAX 203-380-1438

FLORIDA

1817 Cypress Brook Drive
Suite 103
New Port Richey, FL 34655
888-341-7244
727-375-2323
FAX 727-375-2311

MASSACHUSETTS

7 Midstate Drive
Suite 201
Auburn, MA 01501
855-866-3934
508-407-0009
FAX 508-407-0012

NEW YORK

1 Fairchild Square
Suite 110
Clifton Park, NY 12065
888-823-6427
518-877-7101
FAX 518-877-8561

PENNSYLVANIA

2101 North Front Street
Building 4, Suite 201
Harrisburg, PA 17110
888-960-4018
717-836-7641
FAX 717-836-7924

SOUTH CAROLINA

1327 Miller Road
Suite D
Greenville, SC 29607
800-752-3922
864-289-0311
FAX 864-281-9846

TEXAS

P.O. Box 191329
Dallas, TX 75219
800-752-3922
FAX 864-281-9846

www.hrpassociates.com

Task 2: Remediation Oversight

Remediation will consist of excavation and off-site disposal of impacted soil as presented below. Our revised Task 2 scope includes preparation of the required notice, coordination with your contractor, supervision of the excavation, collection of confirmation and waste characterization samples after excavation, and providing you and your contractor with the laboratory results. HRP will assist your contractor with the disposal paperwork. Then your contractor will arrange for facility approval and coordinate the pick-up and disposal. You can expect the approval process to take about 2 to 3 weeks after the receipt of lab results. We will work with your contractor on the disposal approval.

You (or your contractor) will be responsible for the Pre-remedial structural evaluation and site structures, CBYD utility markout, excavation, backfill, pavement restoration, waste disposal facility approval, transportation and disposal of soils. HRP will not be responsible for any utilities or on-site structures.

Public Notification

In accordance with the state regulations, HRP will post public notice in the local newspaper as well as post a notification sign at the site 30 days prior to commencing remedial activities. Alternatively, you may wish to provide letters to neighbors in lieu of the sign.

Soil Excavation

HRP will oversee the removal of one 22-ton truck of soil. Soil confirmation samples will be collected at the sidewall and bottom at a rate of one sample per 20 feet. The soil samples will be analyzed for one or more of the following parameters:

- Total lead
- Lead as extracted by synthetic precipitation leaching procedure (SPLP) EPA Method 1312

When applicable, laboratory analyses will be completed pursuant to the CT DEEP Reasonable Confidence Protocol (RCP).

HRP will collect one waste characterization sample. HRP will submit the sample to a Connecticut certified laboratory to be analyzed for the following parameters:

- Volatile organic compounds (VOCs) by EPA Method 8260C preserved by EPA Method 5035A
- Semi Volatile Organic Compounds (SVOCs) via EPA Method 8270D
- Total Petroleum Hydrocarbons (TPH) by EPA Method 1664
- pH
- Flashpoint
- PCBs and Pesticides by EPA Methods 8081 and 8082
- Total reactivity
- Paint filter

HRP will provide your contractor with the waste characterization results so that your contractor may obtain approval from an appropriate waste disposal facility or landfill as appropriate. If further excavation is required following receipt of the sample results, HRP will provide you a scope modification.

Task 3: Groundwater Monitoring Well Installation

Two groundwater monitoring wells will be installed at the site and will be monitored to accurately document the groundwater quality. One of these wells will be installed in the interior of the site building (in the garage/basement) and will be completed in bedrock; and the other will be installed downgradient of the area containing the lead-impacted soil. Both monitoring wells will be constructed of one- to two-inch PVC with at least a 10-foot screened interval and will be completed at depths between 15 to 20 feet below grade. The HRP representative will characterize all soils removed from the boring and screen them with a Photoionization Detector (PID) in the field to determine the presence of VOCs. At least one soil sample will be collected from each monitoring well location and submitted for the following laboratory analysis.

- VOCs by EPA Method 8260C preserved by EPA Method 5035A
- ETPH using the CT ETPH method
- Total RCRA 8 metals by EPA 6000/7000 series methods

Task 4: Groundwater Monitoring & Reporting

Following soil remediation, HRP will begin quarterly groundwater compliance monitoring as required under the CT Department of Energy and Environmental Protection (CT DEEP) Remediation Standard Regulation (RSR). This work will consist of the sampling of all on-site monitoring wells, including those installed in Task 3.

Prior to sampling, the depths to groundwater will be measured with an electric water level indicator. The wells will be purged and sampled using low-flow procedures in accordance with the EPA Region 1 *Low Stress (Low Flow) Purging and Sampling Procedure for the Collection of Ground Water Samples from Monitoring Wells (Revision 3)* and CT DEEP's *Site Characterization Guidance Document*.

After field parameters have stabilized, per the low-flow sampling guidance, groundwater samples will be collected and appropriately preserved in the field, packed on ice and submitted to the laboratory for analyses under chain of custody. One duplicate groundwater sample and one trip blank will be submitted for QA/QC purposes.

Groundwater samples will be analyzed pursuant to the RCP for one or more of the following parameters.

- VOCs by US EPA Method 8260
- RCRA 8 Metals by US EPA Method 6010

- ETPH by CT DEP Methods
- PAHs by US EPA Method 8270

A total of four post-remediation groundwater monitoring events will be conducted over a period of up to 2 years. An email update summarizing the laboratory analytical results will be prepared after each event.

Please note that the costs included within this scope of work are estimated for the first 4 groundwater sampling events. Additional costs will be provided under another cover for any additional groundwater sampling events required based on results.

Task 5: Reporting and Project Management

Upon completion of Task 2 HRP will prepare a Remedial Action Report (RAR), documenting all activities conducted at the site. This report must be provided to the CT DEEP.

HRP will conduct project management and oversight throughout the duration of the project to ensure proper scheduling and execution of the work. HRP will maintain an open line of communication with the client, coordinating all on-site activities and providing you with regular project updates and results. Any questions or issues that arise will be directly and promptly addressed.

Task 6: Verification

HRP will prepare a final Verification for the site in accordance with the Connecticut Transfer Act and the CT DEEP Verification Report Guidance Document issued August 1, 2008.

PROJECT BUDGET AND SCHEDULE

The tasks detailed above can be prepared for the Time and Materials costs presented below. The cost per task is as follows:

Task 1: Remedial Action Plan	\$ 3,500.00
Task 2: Remediation Oversight	\$ 8,500.00
Task 3: Groundwater Monitoring Well Installation	\$ 8,500.00
Task 4: Post-Remediation Groundwater Monitoring	\$ 16,000.00
Task 5: Reporting and Project Management	\$ 8,000.00
Task 6: Verification	<u>\$ 15,000.00</u>
TOTAL	\$ 59,500.00

AUTHORIZATION TO PROCEED

Before HRP can begin work on this project, we require that you return the **original copy of the proposal and the signed original copy of the attached “Terms and Conditions”** authorizing us to proceed with the work described above. Please retain a copy of the original proposal and the signed “Terms and Conditions” for your records.

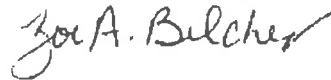
Mr. Kent Johnson
December 2, 2013
Page 5

In addition, HRP requests a retainer of \$25,000.00 prior to implementation of the scope of work to cover a portion of our subcontractor costs.

If you have any questions about this proposal, please do not hesitate to contact HRP Associates, Inc. at (860) 674-9570.

Sincerely,

HRP ASSOCIATES, INC.



Zoé A. Belcher, LG, LEP
Project Manager



Scot Kuhn, LEP
Regional Manager

Attachment

HRP Associates, Inc.

Creating the Right Solutions Together

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TERMS AND CONDITIONS

HRP Associates, Inc.

CLIENT: Compatible Computers

DOLLAR VALUE OF PROPOSAL: \$50,000.00
(RETAINER: \$25,000.00)

PROPOSAL DATE: December 2, 2013

SITE LOCATION: 233 East Main Street, Torrington, CT

1. **AGREEMENT AND PARTIES:** HRP Associates, Inc. is referred to herein as HRP. The individual or group to which our Proposal is addressed is hereby referred to as the Client. The Agreement by and between HRP and the Client consists of the scope of services specifically defined in the attached Proposal, any documents that are attached to the Proposal and these Terms and Conditions.

2. **COMPENSATION:** The costs of basic services to be provided by HRP are specified in the Proposal. HRP will submit invoices to the Client on a monthly basis documenting costs incurred in the previous calendar month including labor charges, laboratory analysis charges, and expenses, as applicable, unless a different billing method is specified in the Proposal. Invoices are due and payable upon receipt by the Client. Interest in the amount of 1½% per month or, if lower, the maximum lawful rate, will be charged on any amounts that are unpaid at the end of thirty (30) calendar days of the invoice date. Invoices not paid within sixty (60) calendar days of the invoice date will result in cessation of work until such invoices rendered are paid in full. In the event payment in full is not received within ninety (90) calendar days of the invoice date, the account shall also be subject to collection by our attorney, and any and all reasonable costs of collection, including reasonable attorney's fees, shall be paid by the Client. Further, HRP reserves the right to sell the work product to any interested party in the event the Client is in default of its payment obligations for a period of greater than ninety (90) days. Payment can be made by check to: HRP Associates, Inc., 197 Scott Swamp Road, Farmington, Connecticut 06032, Attention: Accounts Receivable. To arrange payment by credit card (MasterCard or Visa), contact HRP's Accounts Receivable Department at 860-674-9570. Reference to HRP's invoice number should be included with the payment.

3. **ADDITIONAL CHARGES:** Costs quoted do not include State or local taxes, which will be added to invoices where applicable. The cost for project-related information technology communications, including but not limited to cellular phones, facsimile, and project information technology systems management software and hardware, will be charged at three percent (3%) of the total labor charges for projects billed on a time and materials basis, and is in addition to the specified not-to-exceed cost. The foregoing sentence is not applicable to projects billed on a lump-sum basis. A twenty-five percent (25%) surcharge applies to labor in connection with expert testimony, and such labor will be billed in ½ day increments.

4. **ADDITIONAL SERVICES:** If the Proposal sets forth a not-to-exceed cost for basic services, HRP will not exceed such cost without the Client's consent. If authorized by the Client, services provided beyond such cost for basic services will be billed on the following basis:

(a) **Direct Labor Costs** – A specified rate for each category of HRP's personnel, for the time that they actually spent working on the Client's project and for required travel (portal to portal), as documented and certified by HRP. HRP may revise rates from time to time to account for salary adjustments and increased costs. Required and/or client requested overtime is billed at a factor of 1.5 times the hourly rates charged. Overtime is defined as any hours worked beyond eight (8) hours in one day or forty (40) hours in one work week, or on Saturday, Sunday, or an HRP holiday.

(b) **Laboratory Analysis Charges** – A specified rate for each laboratory analysis parameter beyond those included in the Proposal (where applicable).

(c) **Expenses** – Where applicable, project-related expenses for travel, meals, overnight delivery, priority mail, outside reproduction, courier services, subcontracting (other than laboratory analysis), material and equipment purchases, and miscellaneous other direct charges are billed at cost plus twenty percent (20%) for handling and administration.

5. **HRP'S RESPONSIBILITIES:** HRP shall comply with all Federal, State and local laws, ordinances, rules and regulations, permits, licenses, and requirements applicable to HRP while performing the services described in this Agreement. HRP shall be an independent contractor with respect to the services rendered under this Agreement, and no other relationship shall exist or be deemed to exist between HRP and the Client. During the performance of services called for in this Agreement, HRP shall be responsible for exercising that degree of skill and care as is the generally accepted professional practice of other engineers undertaking similar services at the same time and in the same geographical area. HRP's work product is also subject to certain limitations which are described in HRP's report(s) provided in connection with the Proposal, and are incorporated herein by reference. Notwithstanding anything herein or elsewhere to the contrary, the total liability of HRP and its officers, directors, employees, and agents arising out of this Agreement is limited to \$50,000 or the total compensation received by HRP (less amounts paid by HRP to subcontractors) under this Agreement, whichever is greater.

HRP's insurance policies do not cover HRP's defense against claims alleging damage caused by a release of pollutants as a result of HRP's work. Since HRP is normally engaged in efforts to stop/reduce the release of pollutants to the environment and is not the originator of any pollutants, it cannot and does not accept any responsibility for damages that may result from a release or migration of existing pollutants that may be associated with the work performed at or associated with the Client's work site or premises.

When work performed by HRP or HRP's subcontractors pursuant to the Proposal involves subsurface (subterranean) investigations, explorations, and/or excavations of any type (below ground surface, paved surfaces, graded surfaces or floors), HRP will contact the appropriate Call Before You Dig organization to obtain utility mark outs as are customarily provided through such services and review plans and information provided by the Client. If a private utility mark-out service is necessary to assure utility clearance, the Client agrees to pay for such service in addition to the cost of the Proposal. In any event, provided HRP is not grossly negligent, HRP will not be responsible for any losses, damages, injuries, or interference to or with any subsurface structure, utility, tank system or system component, pipe, cable, or any other improvements (collectively, "Subsurface Features") if they are not brought to HRP's attention before the commencement of work and/or which are not clearly and accurately physically located on the ground by the Client, such mark-out service or any other public or private utility, agency, company, or individual.

The Client recognizes that disturbances to vegetation, terrain, drainage, paved surfaces and other structures, improvements and equipment will result from the use of exploration or excavation equipment. HRP will use reasonable precautions to minimize such damage, but cost of restoration of such damage is not included in the Proposal and the Client will not hold HRP liable for such disturbances, effects or damages arising from such subsurface investigation, exploration or excavation work performed by HRP or HRP's subcontractors pursuant to this Agreement.

HRP shall maintain the following insurance in force at all times:

Worker's Compensation Insurance, including Employer's Liability, with a limit of at least \$500,000.
Comprehensive Liability Insurance with limits of at least \$1,000,000 per occurrence for bodily injury & property damage.
Automobile Liability Insurance with minimum limits of: Bodily Injury & Property Damage - Combined single limit \$1,000,000.
Combined Contractor's Pollution and Professional Liability with \$5,000,000 per occurrence and \$5,000,000 aggregate, claims made basis.

6. **THE CLIENT'S RESPONSIBILITIES:** The Client is required to appoint an individual who shall be authorized to act on behalf of the Client, with whom HRP can confer, and whose instructions, decisions and consent will be binding on the Client. The Client will also obtain all required permits and approvals necessary for performance of the Proposal; provide HRP with access to all available information pertinent to the project including all maps, drawings and records; reveal to HRP all facts that may be relevant to or have a bearing on the work (and HRP shall be entitled to rely on same); assist HRP in obtaining access to all public and private lands and/or records that may be required to perform the work; and promptly notify HRP, at the earliest opportunity, when and if the Client determines portions of the work are not being performed with customary skill and care. The Client or another party designated by the Client shall be responsible for all waste generated by HRP's activities, including the responsibility to sign manifests, bills of lading, or other shipping documents. The Client shall be responsible for site safety, and HRP shall not be responsible for identification of any unsafe conditions. If HRP identifies any unsafe conditions, HRP shall make a reasonable effort to notify the Client, but such action shall not be construed to impose a duty on HRP to identify and notify the Client of other unsafe conditions.

7. **DOCUMENTS:** All reports, boring logs, field notes, laboratory data, calculations, research and other documents and information prepared by HRP or its subcontractors, whether in paper or electronic form, are instruments of service and shall remain the sole property of HRP. Such documents and information are delivered to the Client are for the Client's use only and are not to be relied upon by any other party, unless agreed to by HRP in writing.

8. **TERMINATION PROVISIONS:** Either party may terminate this Agreement upon thirty (30) days written notice, provided termination by the Client shall not be effective unless and until the Client has paid HRP for the work performed up to the point of termination. Any termination of this Agreement by a party shall not terminate any provisions that are intended to remain in effect following cessation or completion of the performance of services (including, without limitation, Sections 9 and 11 of this Agreement).

9. **ARBITRATION:** Any controversy or claim relating to or arising out of this Agreement, or the breach thereof, shall be settled by Arbitration in the City of Hartford, Connecticut, in accordance with the then current rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any claim brought by the Client against HRP shall be brought no later than one year after the date of substantial completion of HRP's services hereunder or the expiration of the applicable statute of limitations, whichever is earlier.

10. **HAZARD COMMUNICATION:** Part of the services to be provided by HRP may involve the use or storage of certain chemicals such as cleaning/decontamination fluids, sample preservatives, and/or gas chromatograph standards. It is expected that no special precautionary measures will need to be taken to protect the Client's employees from these chemicals during normal operating conditions or unforeseeable emergencies, as relatively small amounts of these chemicals will be present. Material Safety Data Sheets for such chemicals are available upon request.

11. **INDEMNIFICATION:** The Client does hereby agree to defend, indemnify and save HRP, its officers, directors, employees, agents, subcontractors and affiliates harmless from and against all claims, suits, fines, penalties, and attorneys fees (all of the foregoing, collectively, "Claims") that arise out of or are related to this Agreement and the services provided hereunder, including, without limitation, Claims involving access to the site, Subsurface Features, generation of waste, hazardous materials brought on site, and pre-existing and/or migration of hazardous substances and materials, except to the extent caused by HRP's gross negligence or willful misconduct.

12. **FORCE MAJEURE:** HRP shall be excused for the period of any delay in the performance of any obligations hereunder, when prevented by doing so by cause or causes beyond HRP's reasonable control, which shall include, without limitation, all labor disputes, civil commotion, war, wartime operation, invasion, rebellion, hostilities, military or usurped power, terrorism, government regulations or controls, inability to obtain any material or services or acceptable substitute therefor, or through acts of God.

13. **MISCELLANEOUS:** This Agreement contains the complete understanding between HRP and the Client with respect to the work to be performed. These Terms and Conditions shall govern over any inconsistent provisions in the Proposal, unless a particular term or condition is specifically revoked or amended in the Proposal. This Agreement may not be changed or modified except in writing, and when signed by both parties. This Agreement shall be executed in the State of Connecticut and shall be interpreted and enforced according to the laws of the State of Connecticut. This Agreement may not be assigned by either party without the other's consent. In the event of any litigation, the parties waive trial by jury. In the event any term or provision of this Agreement is deemed invalid, the remaining terms and provisions shall apply. The person signing this Agreement represents that the execution of this Agreement have been duly authorized by the Client and such person has the authority to sign. The headings of this Agreement are for convenience only and shall not limit or enlarge the meaning of the language of this Agreement. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future. The Proposal is valid for a period of sixty (60) days. This Agreement shall not constitute an offer and shall only be binding on HRP when executed by HRP.

ACCEPTED FOR CLIENT:

Signature of Authorized Representative

Name:

Title:

Date:

[Signature]
KENT JOHNSON
OWNER
12/3/13

ACCEPTED FOR HRP:

Signature of Authorized Representative

Name:

Title:

Date:

[Signature]
Howard Hurd
COO
12/18/13

Scot Kuhn

From: Kent Johnson [kent@compx2.com]
Sent: Tuesday, December 03, 2013 8:55 AM
To: Scot Kuhn
Subject: RE: Revised proposal

Sorry, this email did not arrive to me until after your last email. I will mail the \$8000 this morning referencing this email. Please be as specific as you can about what I need to do before you can schedule. If I need signed letters, put up a sign, put an ad in the paper, call before you dig.... Let me know what needs to be done for you to proceed.

Kent Johnson
Compatible Computers
233 East Main Street
Torrington, CT 06790
(860) 626-8486

From: Scot Kuhn [mailto:scot.kuhn@hrpassociates.com]
Sent: Monday, December 02, 2013 2:37 PM
To: Kent Johnson
Subject: RE: Revised proposal

There is no 30-day wait if public notice is completed to neighbors as you have done and newspaper. 30-days is only for the sign. The \$3,500 is to prepare the action plan and provide to the State. We can conduct the well monitoring at a later time in which case the retainer would be \$8,000.

-Scot

Scot Kuhn, LEP, Regional Office Manager
HRP Associates, Inc., 197 Scott Swamp Road, Farmington, CT 06032
Work: (860) 674-9570 / 674-9624 Mobile: (860) 989-9172

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From: Kent Johnson [mailto:kent@compx2.com]
Sent: Monday, December 02, 2013 2:18 PM
To: Scot Kuhn
Subject: RE: Revised proposal

I am disappointed in the 30 day wait that I knew nothing about before today.

I don't understand the \$3500 action plan.

I will not be able to do the rest of the plan immediately. I had only planned to do the remediation right now and the well monitoring later.

Kent Johnson
Compatible Computers
233 East Main Street
Torrington, CT 06790
(860) 626-8486

From: Scot Kuhn [<mailto:scot.kuhn@hrpassociates.com>]
Sent: Monday, December 02, 2013 1:39 PM
To: Kent Johnson
Cc: Zoe A. Belcher
Subject: Revised proposal

Kent,

Sorry for the delay. Attached is the revised scope as discussed. Send me the T&C and retainer and I can get you information on the public notice and start preparing the RAP for CTDEEP.

Regards
-Scot

Scot Kuhn, LEP, Regional Office Manager
HRP Associates, Inc., 197 Scott Swamp Road, Farmington, CT 06032
Work: (860) 674-9570 / 674-9624 Mobile: (860) 989-9172

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From: Kate L. Anderson
Sent: Monday, December 02, 2013 1:27 PM
To: Scot Kuhn
Subject: RE:

Here's the revised proposal with new total.

Kate L. Anderson
Marketing Assistant
HRP Associates, Inc.
197 Scott Swamp Road
Farmington, CT 06032
860-674-9570

From: Scot Kuhn
Sent: Monday, December 02, 2013 12:27 PM
To: Corporate Marketing Services

Subject:
Importance: High

Kate,

Can you please review, re-total and finalize revised proposal and send to me electronically?

-Scot

Scot Kuhn, LEP, Regional Office Manager
HRP Associates, Inc., 197 Scott Swamp Road, Farmington, CT 06032
Work: (860) 674-9570 / 674-9624 Mobile: (860) 989-9172

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EXHIBIT B

2004 WL 2943115

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford.

SS & C TECHNOLOGIES, INC.
v.
COLUMBUS CIRCLE INVESTORS et al.

No. CV044002003S. | Nov. 12, 2004.

Attorneys and Law Firms

Donahue, Durham & Noonan PC, Guilford, for SS & C
Technologies Inc.

Ryan, Ryan, Johnson & Deluca LLP, Stamford, for
Columbus Circle Investors and Circle Trust Co.

Opinion

BEACH, J.

*1 I have reviewed the materials submitted in connection with this motion and have read the authority in support of and in opposition to the motion. The matter may be considered in light of the following general propositions.

1. An application for a prejudgment remedy brought pursuant to § 52-278a et seq. is limited to “a civil action” and must be followed by a writ, summons and complaint within thirty days. Such application is not authorized, then, in the context of arbitration.

2. Similar remedies are available in the arbitration context pursuant to § 52-422, but a currently pending arbitration proceeding is a prerequisite.

3. Arbitration is a preferred remedy. Especially where there is a broadly worded clause providing for arbitration, arbitration will be compelled whenever the court lacks “positive assurance” that the dispute is not arbitrable: We initially note that, because we favor arbitration, we will defer to this alternative method of dispute resolution if the contractual arbitration provisions fall within the grey area of arbitrability, employing the “positive assurance” test as set out in *United Steelworkers of*

America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960). Under this test, “ ‘judicial inquiry ... must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance ... An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.’ ” (Emphasis in original.) *Board of Education v. Frey*, 174 Conn. 578, 582, 392 A.2d 466 (1978), quoting *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, *supra*, at 582-83.

White v. Kampner, 229 Conn. 465, 472-73 (1994).

The facts, developed rather informally at the hearing on October 25, 2004, are that the plaintiff SS & C entered into a set of written contracts with Columbus Circle on December 26, 1997. One of the documents specifically provided that “[a]ny dispute arising out of or relating to this contract” shall be submitted to arbitration. ¶ 11.12 of the Software Licensing Agreement. The same document provided that the contract could not be assigned without consent of the other party; but if substantially all assets were transferred, then an assignment would be effective as to the other party. ¶ 9. Over the course of time a related company, Circle Trust, seems to have stepped into the shoes of Columbus Circle. The precise business history has not been shown. Finally, it was represented at the hearing that Pimco has acquired Circle Trust.

In the current state of affairs, it is quite clear that the action should be stayed as to Columbus Circle, with whom SS & C specifically contracted. The contractual claim is clearly embraced by the broadly worded arbitration clause; the claims sounding in quantum meruit and accord and satisfaction surely are “related to” the contractual agreement.

*2 The situation regarding Circle Trust is less clear, largely because the business relationship between the two entities and the nature of the transfer of the SS & C rights and obligations were not developed in the evidence. It is impossible to tell, in the current state of the evidence, whether or not the provisions of ¶ 9 effectively transfer the applicability of the arbitration clause. I am, therefore, also staying consideration of the application for a prejudgment remedy as to Circle Trust, without prejudice to additional evidence being presented and of course without prejudice to an application for a remedy pursuant to § 52-422, if arbitration is initiated.

All Citations

The motion for a stay is granted.

Not Reported in A.2d, 2004 WL 2943115

End of Document

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