ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-289

MARCH TERM, 2009

Union School District # 45	APPEALED FROM:
v.	
Wright & Morrissey, Inc.	Washington Superior Court
v.	
Banwell White Arnold Hemberger & Partners, Inc. and Capital Earth Moving, Inc.	DOCKET NO. 670-10-02 Wncv
	Trial Judge: Dennis R. Pearson

In the above-entitled cause, the Clerk will enter:

Wright & Morrissey, Inc. (Wright) appeals from an amended final judgment of the Washington Superior Court following a remand from this Court in its original appeal, Union Sch. Dist. No. 45 v. Wright & Morrissey, Inc., 2007 VT 129 (Union I). In this appeal, Wright raises numerous claims; the bulk of these were resolved or waived in Union I and will not be revisited. The balance of Wright's claims was not properly preserved for review. Accordingly, we affirm.

The underlying facts are set forth in detail in Union I and need not be restated. It suffices to note that Wright's appeals stem from an action by the District to enforce a project architect's decision, pursuant to a contractual alternative-dispute-resolution provision, holding Wright to be responsible for frost-heave damage to a sidewalk that it had constructed. The trial court ruled in favor of the District and awarded damages of $107,477; offset that amount by $5000, the amount that remained due and owing on the contract; and declined to award prejudgment interest on the $5000 offset.

Wright appealed, claiming, inter alia, that an arbitration provision in the contract stripped the superior court of jurisdiction; that certain procedural infirmities invalidated the architect's decision; that the architect violated Wright's due process rights; and that the court erred in declining to award prejudgment interest. In Union I, we rejected all of Wright's claims, save one. We concluded that Wright was entitled to prejudgment interest and remanded for the trial court to calculate the prejudgment interest award and amend the judgment accordingly. Id. ¶ 15.

Following our remand, Wright filed a motion to dismiss, alleging that the trial court lacked subject matter jurisdiction, while third-party defendants Banwell (the project architect) and Capitol Earth Moving, Inc. filed motions for summary judgment on Wright's remaining third-party claims.[1] The trial court denied the motion to dismiss, ruling that this Court had

[1] In the original proceedings below, Wright had filed third-party complaints against Banwell and Capitol for implied indemnification. The trial court severed these claims so that the

"considered and squarely rejected" each of the claims on which it was based in Union I; granted the motions for summary judgment filed by the third-party defendants; rejected Wright's "suggestion" that its $5000 setoff be augmented by attorney's fees; awarded prejudgment interest, which increased the amount of the setoff to $9200; and entered an amended final judgment in favor of the District for $98,277 plus interest. This appeal followed.[2]

In this appeal, Wright first renews its claim that the superior court lacked subject matter jurisdiction over the District's original complaint. As we have explained, "[w]hen a case is remanded, our decision is the law of the case on the points presented throughout all the subsequent proceedings." State v. Gomes, 166 Vt. 589, 591 (1996) (mem.). Consistent with this policy, we have repeatedly held that a remand from this Court with specific directions to the trial court to consider one issue does not operate to generally reopen the case to reargument or authorize the court to consider issues beyond the scope of our remand. See, e.g., Havill v. Woodstock Soapstone Co., 2007 VT 17, ¶ 10, 188 Vt. 577, 580-81. Issues addressed in the first appeal therefore will generally not be reconsidered absent "exceptional circumstances," such as where there has been a substantial change in the facts or the ruling would result in "manifest injustice." Gomes, 166 Vt. at 591 (quotation omitted).

Wright's assertion here that the trial court somehow lacked subject matter jurisdiction to enforce the architect's decision rests on its corollary claims that the decision was not properly signed or served on Wright, and that the architect violated Wright's due process rights by failing to conduct a hearing. Although Wright argues to the contrary, the trial court here was plainly correct in ruling that each of these claims was squarely considered and rejected in Union I, which established the law of the case. See 2007 VT 129, ¶¶ 9-11, 13. As none of exceptions to the application of the law-of-the-case doctrine apply, we will not revisit the merits of these issues.

Wright also contends that the architect's decision was fatally flawed and unenforceable because the District failed to file a timely, written notice of its claim; it was rendered by an improper authority under the contract; and it deprived Wright of due process. Again, these issues were considered and rejected in Union I and will not be revisited. See 2007 VT 129, ¶¶ 10-14. Wright further contends that the lower court erred in ruling that Wright had waived its contractual right to arbitrate the architect's decision, and in calculating the damages to which the District was entitled. As Wright failed to directly challenge these rulings in Union I, the issues were waived. See Havill, 2007 VT 17, ¶ 10 ("[A]ppeals may not be prosecuted in a piecemeal fashion, so that claims which are not raised in the initial appeal may not be brought on remand."); In re Hart, 167 Vt. 630, 631 (1998) (mem.) (issues not raised on appeal are waived for purposes of later review).

Wright next asserts that the trial court erred in failing to award the penalty and attorney's fees to which it was allegedly entitled under the Prompt Payment Act, 9 V.S.A. § 4007(b) & (c), in conjunction with its $5000 setoff. Again, these issues were not raised in Union I and were therefore waived. Havill, 2007 VT 17, ¶ 10.

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dispute between the District and Wright could be resolved first, determined that Wright was liable to the District for damages of $102,477, and entered a final judgment thereon.

[2] Wright has filed a formal notice with the Court dismissing its appeal from the summary judgment entered in favor of Capitol. As Wright has not briefed any of the issues relating to the third-party complaints or challenged the summary judgments in favor of Capitol and Banwell, we view any claims relating to these matters as waived in any event.

Finally, Wright contends the court erred in awarding it pre-judgment interest calculated from August 1998 to September 19, 2005 (the date the trial court entered its findings of fact) rather than to June 20, 2008 (the date of the amended final judgment). Additionally, Wright contends the court erred in awarding the District post-judgment interest starting from September 19, 2005 rather than from January 4, 2006, when the original final judgment was entered. These dates and calculations were based on the proposed judgment order submitted by the District. In its decision here, the trial court explained that it had specifically directed Wright to file any response or objection that it had to the proposed judgment or calculation of prejudgment interest and that Wright had failed to do so. Accordingly, we conclude that any objection to the award of interest was waived.

Affirmed.[3]

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

[3] While this appeal was pending, the District filed a "motion for sanctions" asking that certain issues raised in Wright's docketing statement be stricken on the ground that they were previously considered by the Court in the original appeal in this matter, and that it be awarded reasonable attorney's fees incurred in bringing the motion. The motion to strike and for sanctions is denied.