

AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION INDUSTRY ARBITRATION RULES
AAA Case No. 01-24-0000-7411

HARRIS ASSOCIATES

Claimant/Counter Respondent

v.

NETA DALLAS, LLC

Respondent/Counter Claimant

FINAL AWARD

Before me is a dispute between Harris Associates (“Harris”) and Neta Dallas (“Neta”) arising out of that certain AIA A101 Construction Contract dated July 12, 2022 between Harris, as Contractor, and Neta, as owner (“Contract”).

The final evidentiary hearing on the merits was held in Dallas, Texas on August 28, 2024 and continuing through August 30, without objection. Following extensive briefing, I closed the hearing on October 7, 2024.

The Parties are represented by experienced and able counsel who professionally and zealously advocated the positions of their clients.

I have considered the evidence, legal authorities, presentations and arguments put forward by the Parties and make this Final Award.

Factual Background

The Project that gives rise to this case is the construction of a restaurant named La Neta Cocina Y Lounge located at 2525 Elm Street in the Deep Ellum district of Dallas (“Project”). According to the Construction Schedule attached to the Contract the building permit was scheduled to be obtained by Neta not later than June 24, 2022, with construction to begin shortly thereafter. As per the Contract, Harris and Neta anticipated a completion date of November 4, 2022, i.e., 134 days following the issuance of the building permit. The Contract Price was originally \$2,575,993 and, as amended with CO 1, the final amount was \$2,633,842. It’s undisputed that the Building Permit was not issued until September 26, 2022. Ultimately, Harris obtained the temporary certificate of occupancy (“TCO”) on

February 10, 2023, and the final certificate of occupancy (“FCO”) on March 15, 2023. Neta had the grand opening of La Neta Cocina Y Lounge on February 20, 2023, and it has been in operation ever since. Of the \$2,633,842 Contract Price, Neta has paid Harris a total of \$2,352,238.90, leaving a balance of \$281,603.10. According to Harris, Neta’s last progress payment was in January 2023 for the December 2022 Pay Application No. 7.

Parties’ Positions

In this case, Harris seeks the following

Contract balance of \$281,603.10 (unpaid progress payments and retainage)

Extra work as set out in proposed Change Order 2 of \$261,115.81

Extended jobsite costs (including general conditions) of \$175,672.

Prompt payment interest for progress payments and retainage of \$75,952.02

Pre and post judgment interest, attorneys’ fees and costs of arbitration.

In support, Harris claims that it achieved substantial completion when it obtained the TCO on February 10, 2022 and no later than February 20, 2022 when Neta exercised its right to beneficial occupancy with its grand opening. Final completion occurred on March 15, 2022, with the issuance of the FCO. Despite “enjoying beneficial use and occupancy” of the Project for almost 20 months, Neta, according to Harris, still owes over \$280,000 in Contract balance payments.

Additionally, Harris claims that it was delayed on its critical path by 3 events not of its making; (1) the late obtaining by Neta of the building permit, (2) the fire department inspection delay and (3) a weather delay caused by the February 2023 ice storm. Additionally, on top of a highly compressed schedule, says Harris, it had to deal with a plethora of Neta driven scope and design changes that ultimately necessitated \$261,115 of extra work. Notwithstanding, Harris claims that it finished its work within the original schedule, as extended, and has fully paid its subcontractors. Harris also seeks \$175,672 for extended jobsite costs and general conditions based on the alleged delay from December 2, 2022, through February 14, 2023. Finally, Harris seeks Prompt Payment Act interest on delinquent progress and final payments.

In response, Neta alleges that Harris’s complete failure to organize, schedule and supervise its deficient subcontractors “put it behind the [P]roject timeline”, not anything that Neta did or didn’t do. In fact, Neta claims, Harris’s incomplete and defective work is still plaguing the Project almost 2 years later. Specifically, Neta points to chronic and extensive problems it has had with the HVAC system, Harris’s failure to comply with ADA requirements,

delamination of the ceiling beams and a manufacturing bust on the patio doors as examples of shoddy workmanship. In short, asserts Neta, “Harris’s failure to *timely* deliver a *complete* restaurant and the defects in the work it did perform” justify Neta’s not paying Harris the contract balance and claiming over \$305,565.12 in remedial damages and \$30,000 in liquidated damages.

Contravening Neta’s allegations, Harris claims that it completed the Project timely, given the excusable and compensable delays, and that Neta presented zero credible evidence that Harris was not entitled to final payment in accordance with the Contract. In fact, Harris says it stayed on the Project until May performing final punch list and warranty work. It was only after not being paid for over 60 days that it stopped doing work for free. Thus, asserts Harris, Neta was in material breach of the Contract relieving Harris of any further obligation to perform. As to the remedial damages claim of \$325,000 Harris argues that Neta failed to prove that problems, if any, with the Project HVAC system, ADA compliance, etc., were caused by Harris. And even if there were such proof, Neta failed to show that the damages it seeks were reasonable and necessary. In support, Harris points to Texas law requiring such testimony, as a matter of law, and Neta’s failure to provide it, noting that Randall Huggins, Neta’s only damages witness, admitted that he was not a cost expert and that he had no methodology in estimating the damages reflected in Exhibit 88. Therefore, Harris’s damages claim fails for lack of proof.

Both Harris and Neta seek attorneys’ fees and arbitration costs.

Findings

Based on the greater weight of the credible evidence I make the following findings of fact and law.

1. Harris fully performed its obligations under the Contract and is entitled to recover the unpaid Contract balance of \$251,603.10
2. Harris is entitled to recover for extra work. Looking at the evidence as a whole, I find the amount owed under CO 2 is \$128,037.59
3. Without a reliable schedule analysis and causation model, Harris did not show an entitlement to extended jobsite overhead, i.e, general conditions and other requirements.
4. Likewise, without legally cognizable causation evidence and damages testimony, Neta did not show an entitlement to remedial and liquidated damages. Additionally, Neta’s breach of contract in not paying Harris the contract balance when due excused Harris from further performance under the Contract.

5. No good faith dispute existed for the payment of the contract balance. Therefore, Harris is entitled to Prompt Pay interest of \$75,952.02
6. Harris is entitled to foreclose its Mechanic's Lien in an amount consistent with this Award.
7. Harris is entitled to its attorneys' fees in accordance with Tex. Rev. Civ. Prac. Rem. Code Section 38.001 and AAA Rule 49(d) in the amount of \$87,788.50.

Relief Awarded

Harris is entitled to \$251,603.10 in unpaid Contract balance and \$128,037 in change order work for a total of \$379,640.10 in damages.

Harris is also entitled to Prompt Pay interest of \$75,952.02 and foreclosure of its Mechanics Lien in an amount consistent with this Award.

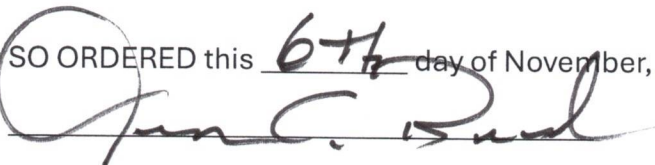
Harris is entitled to its attorneys' fees of \$87,788.50

Neta's claims are denied.

The administrative fees and expenses of the American Arbitration Association totaling \$20,575.00 and the compensation of the Arbitrator totaling \$23,625.00 shall be borne as incurred by the Parties.

This Award is in full settlement of all claims and counterclaims submitted in this Arbitration. All claims and counterclaims not expressly granted herein are hereby denied.

SO ORDERED this 6th day of November, 2024



George E. Bowles, Arbitrator

HARRIS ASSOCIATES

Plaintiff

vs.

NETA DALLAS, LLC and GASTON & GOOD
LATIMER, LP

Defendants

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IN THE DISTRICT COURT

298th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

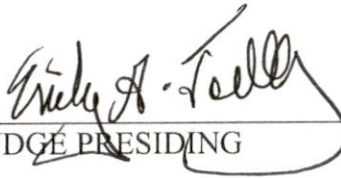
**ORDER GRANTING PLAINTIFF'S MOTION TO
CONFIRM ARBITRATION AWARD AND FORECLOSURE OF LIEN**

ON THIS DAY, the Court considered the Motion to Confirm Arbitration Award filed by Plaintiff Harris Associates. After reviewing the Motion and argument of the parties, if any, the Court rules as follows:

IT IS ORDERED, that the Arbitration Award signed November 6, 2024 ("Award"), is hereby CONFIRMED and the Court hereby enters final judgment in conformance therewith.

IT IS FURTHER ORDERED, that the Lien, recorded by Harris Associates on June 29, 2023, as Instrument Number 2023-202300128552, in the Real Property Records of Dallas County, Texas, is entitled to be foreclosed on the leasehold interest of the Property and an Order of Sale will be issued to any sheriff or constable within the State of Texas to seize and sell the Leasehold Interest of the Property as under execution in satisfaction of the judgments awarded in this Order. The proceeds from the foreclosure sale will be distributed first to the sheriff or constable for the costs of sale and then to Harris Associates in satisfaction of the judgment rendered herein.

SIGNED ON: December 26, 2004



JUDGE PRESIDING

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Cortimilia on behalf of Brad Gaswirth

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Envelope ID: 95367424

Filing Code Description: Motion - Lift Abatement

Filing Description: MOTION TO LIFT STAY AND CONFIRM

ARBITRATOR'S AWARD

Status as of 12/17/2024 9:19 AM CST

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