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Court of Claims of Ohio

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TRANSAMERICA BUILDING COMPANY, INC. Plaintiff/Counter Defendant v. OHIO SCHOOL FACILITIES COMMISSION, etc. Defendant/Counter Plaintiff	Case No. 2013-00349 Referee Samuel Wampler ORDER OF THE REFEREE

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On December 30, 2014, defendant, Ohio School Facilities Commission ("OSFC"), filed its motion for leave to file a third-party complaint *instanter* ("Motion") pursuant to Civ.R. 15(A), supported by its memorandum of law and argument.[1] On January 9, 2015, plaintiff, TransAmerica Building Company, Inc. ("TA"), filed its memorandum contra ("Brief in Opp.") supported by its memorandum of law and argument.[2] On January 20, 2015, OSFC filed its reply *instanter*.[3]

OSFC's Motion. The third-party complaint is limited to indemnification for damages and costs which may be awarded to TA and does not seek any additional relief from the third-party defendants. It does not seek to amend OSFC's pleading, but instead seeks relief from third parties based on an alleged right of indemnification. *See State Farm Mut. Auto Ins. Co. v. Charlton*, 41 Ohio App. 2d 107 (10th Dist.1974). The issue of indemnification between OSFC and the third-party defendants will not unduly burden TA

[1]Technically, the motion is not to amend or supplement pleadings under Civ.R. 15, but instead is a motion under Civ.R. 14(A), as leave to file the third-party complaint was brought more than 14 days after OSFC filed its original answer. Because TA did not object to the motion on this basis, the court considers OSFC's motion as brought pursuant to Civ.R. 14(A).

[2]TA included a motion for separate trial of the third-party claims in the event OSFC's motion to file its third-party complaint was granted.

[3]In its reply, OSFC also included its opposition to TA's motion for separate trial of the third-party claims. OSFC's motion for leave to file a reply *instanter* is GRANTED.

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in its trial of this action. To the contrary, TA's recovery will depend upon proving the actions or inactions of third-party defendants during the course of the project and how those actions or inactions caused TA damages. The relief sought by the third-party complaint does not introduce any new causes of action or issues in the underlying action. Therefore, OSFC's motion for leave to file a third-party complaint is GRANTED. The clerk is directed to detach the third-party complaint from the motion and process the third-party complaint in the normal course.

TA's Motion. Plaintiff's Brief in Opp. includes a motion to order a separate trial of the third-party claims in the event OSFC's motion to file its third-party complaint is granted. TA contends that Civ.R. 14(A) mandates a separate trial of third-party claims upon a motion of any plaintiff, provided those claims are brought by the third-party plaintiff against its agent. OSFC contends that TA failed to submit any evidence or legal support for the proposition that either of the third-party defendants were agents of OSFC. On the basis of the record before the court regarding the agency as asserted by TA without reference to any evidence or authority in support thereof, the motion pursuant to Civ.R. 14(A) for a separate trial of the third-party claims is DENIED, without prejudice.

SAMUEL WAMPLER
Referee

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