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Order on Motion for Withdrawal of Admissions and Motion to Enter Judgment (The City of Atlanta)

Alice D. Bonner
Fulton County Superior Court, Judge

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THE CITY OF ATLANTA, **Plaintiff,** **v.** **INSITUFORM TECHNOLOGIES, LLC f/k/a INSITUFORM TECHNOLOGIES INC., INSITUFORM TECHNOLIGIES, INC./IMANI ENVIRONMENTAL GROUP, INC., *a joint venture*, and IMANI ENVIRONMENTAL GROUP, INC.,** **Defendant.**	)	**Civil Action File No. 2011CV204217**

FILED IN OFFICE
MAR 05 2014
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER ON MOTION FOR WITHDRAWAL OF ADMISSIONS AND MOTION TO ENTER JUDGMENT

This matter is before the Court on Defendants' Motion for Withdrawal of Admissions and Plaintiff's Motion to Enter Judgment. Upon consideration of the briefs submitted on the motions and the record of the case, this Court finds as follows:

This case involves a dispute over three separate sewer rehabilitation contracts between the Plaintiff City of Atlanta (the "City") and Defendants Insituform Technologies, Inc. ("ITI") and Imani Environmental Group, Inc., as joint venture partners (the "JV") and individuals. Plaintiff contracted with Defendants for sewer rehabilitation projects as a part of the Clean Water Atlanta program and federal Consent Decree compliance.

Plaintiff alleges that Defendants defaulted on the contracts by failure to complete work on time, overbilling, accepting payment for work that was never performed and

producing defecting and non-conforming results. ITI and the JV have counterclaimed against the City for breach of contract and quantum meruit.

On May 14, 2013, the City filed its First Motion for Partial Summary Judgment, seeking summary judgment on Defendants' claims for quantum meruit. On July 22, 2013, the Court conducted a Case Management Conference during which counsel reported that the parties were formulating a briefing schedule, so the deadline for Defendants' response had not yet passed.[1] Apparently, the parties have been unsuccessful in their efforts to agree to a briefing schedule. On November 26, 2013, the City filed its Motion to Enter Judgment on the City's First Motion for Partial Summary Judgment, seeking a ruling in light of Defendants' failure to submit a response brief within the standard 30-day briefing period.

Meanwhile, On September 24, 2013, the City filed its Second Partial Motion for Summary Judgment, seeking summary judgment on its claims for breach of contract based on facts deemed admitted due to Defendants' failure to submit responses to request for admissions within the 30-day response window. In response, Defendants filed a Motion to Withdraw Admissions, which the Court indicated it would address in advance of Plaintiffs' dispositive motions.

1. Defendants' Motion to Withdraw Admissions

The parties dispute their informal understanding regarding the deadline associated with Defendants' responses to Plaintiffs' Requests for Admissions, initially served on December 13, 2012. For purposes of this motion, the Court finds it unnecessary to evaluate the conflicting positions taken by the parties with respect to

[1] The Court maintains an internal log for each case documenting items discussed during such conferences and has referred to this resource in recalling the instant conversation.

this issue[2] and will address this matter by applying the two-prong test set forth under O.C.G.A. § 9-11-36(b): "the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits."

After reviewing Defendants' proposed responses to Plaintiff's First Request for Admissions, the Court finds that the merits of the action would be subserved by permitting withdrawal of admissions. Defendants' denials and factual supplements, along with affidavit testimony, would impact Plaintiff's quest for summary adjudication, and the Court would prefer to adjudicate such issues in consideration of the merits rather than a technical disqualification.

Accordingly, and in light of the fact that Plaintiff does not attempt to establish prejudice for purposes of the second prong of the test under O.C.G.A. § 9-11-36(b), the Court **GRANTS** Defendants' motion. Defendants are permitted to serve the responses to Plaintiff attached as Exhibit A to its motion.

2. Plaintiff's Motion for Entry of Judgment

Plaintiff seeks an entry of judgment on its First Motion for Partial Summary Judgment, complaining of Defendants' failure to submit a response within the standard timeline. The Court **DENIES** this request, in recognition of its instruction to the parties to agree to a briefing schedule or present to the Court for resolution any issues the

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[2] This does not mean that the Court takes lightly Defendants' apparently cavalier attitude towards the standard briefing period associated with motions and discovery responses (or careless effort to secure in writing Plaintiff's purported consent to deadline extensions). While the Court maintains a distaste for an adjudication style that relies on technicalities, rather than the merits, Defendants' conduct may nevertheless result in an assessment of attorneys' fees or litigation costs upon an appropriate request.

parties encountered in achieving an agreed schedule. Although the parties should have but did not seek the Court's assistance in setting the schedule, the Court is not disposed to reward one of them for the impasse they reached. Accordingly, the Court **GRANTS** Defendants' request for a continuance and orders the parties to participate in a telephone conference within the next ten (10) days to address a briefing schedule associated with Plaintiff's First Motion for Partial Summary Judgment, after which Plaintiff shall report the agreed upon schedule to the Court.

SO ORDERED this 5th day of March, 2014.

ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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