152 Ohio App.3d 95
Court of Appeals of Ohio,
Seventh District, Mahoning County.

DANIEL E. TERRERI & SONS, INC. et al., Appellees and Cross–Appellants,
v.
MAHONING COUNTY BOARD OF COMMISSIONERS et al., Appellants and Cross–Appellees.

No. 00 CA 269. |
Decided March 10, 2003.

Construction companies brought action against various county officials for breach of construction contracts and failure to release construction bond. After a bench trial, the Court of Common Pleas, Mahoning County, No. 98 CV 906, entered judgment for companies. County officials appealed, and companies cross-appealed. The Court of Appeals, Waite, P.J., held that: (1) "no damages for delay" clauses in contracts encompassed delays in allowing companies to begin work; (2) delay in issuing notice to proceed was not of such an unreasonable length so that companies were justified in abandoning contracts; (3) "termination for convenience" clauses in contracts were enforceable as part of defense to breach of contract, even if officials did not comply with literal terms of provisions; (4) issue of whether companies were entitled to any compensation under "termination for convenience" clauses required remand; and (5) evidence was insufficient to support claim for damages based on lost bonding capacity.

Reversed and remanded.

Attorneys and Law Firms

****923 *98** Henderson, Covington, Messenger, Newman & Thomas Co., L.P.A., James L. Messenger and Jerry M. Bryan, Youngstown, for appellees and cross-appellants.

***99** Paul J. Gains, Mahoning County Prosecuting Attorney, Linette S. Baringer, Chief Assistant, Civil Division, and Constance E. Pierce, Assistant Prosecuting Attorney, Youngstown, for appellants and cross-appellees.

Opinion

WAITE, Presiding Judge.

{¶ 1} This timely appeal and cross-appeal arise out of bench trial in the Mahoning County Court of Common Pleas in which appellants were found to be in breach of two construction contracts. For the following reasons, judgment is reversed as to the breach-of-contract claims and judgment entered for appellants on these claims. The matter is to be remanded for further proceedings as to any ****924** amounts appellants may owe under the "termination for convenience" clauses of the contracts. Judgment is also reversed with respect to damages for lost bonding capacity, because appellees did not demonstrate that any other contracts were actually lost or that the parties contemplated lost bonding capacity when entering into these contracts.

{¶ 2} The record reveals that in 1996, Mahoning County became involved in a project to renovate the former Higbee building in downtown Youngstown so that it could be

used for government office space. Title to the property was transferred to the county in 1996 to facilitate the project. In June 1996, Terreri Construction Company, Inc. ("Terreri"), put in a bid to renovate the roof and atrium of the Higbee building ("roof/atrium contract"). At the same time, Terreri and Avila Contracting and Supply Company, Inc. ("Avila Supply"), put in a bid, as a joint venture, on another part of the project calling primarily for demolition work in the Higbee building ("demolition contract"). Terreri and Avila Supply are appellees in this appeal.

{¶ 3} On July 30, 1997, the Mahoning County Board of Commissioners recommended awarding the roof/atrium contract to Terreri at a cost of $1,580,000, and recommended awarding the demolition contract to the Terreri/Avila Supply joint venture at a cost of $578,000. As part of the bidding process, Terreri filed bid guarantees and performance bonds in the amounts of the proposed contracts. There are documents in the record indicating that Terreri could obtain only a maximum of $3,000,000 worth of performance bonds approved by its insurance company. The record does not indicate that appellants were made aware of Terreri's bonding capacity.

{¶ 4} The parties all signed the contracts on September 18, 1997.

{¶ 5} Both appellees sent appellants a letter on October 10, 1997, requesting a notice to proceed and an increase of 15 percent in the contract price. The contracts had provisions that permitted appellees to begin work only after receiving a "notice to commence" from appellants. By letter, appellees threatened ***100** to withdraw their bid if a notice to proceed or an increase in the contract price was not forthcoming by October 31, 1997.

{¶ 6} Appellees sent appellants another letter on October 23, 1997, declaring that if appellants issued a notice to proceed, appellants were also agreeing to an "equitable increase" in the contract price. Appellees once again proposed a 15 percent increase and declared that their bid was being withdrawn if no notice to proceed or letter of understanding was received by November 14, 1997.

{¶ 7} On December 1, 1997, appellees declared, by letter, that they were withdrawing from the contracts.

{¶ 8} On December 5, 1997, appellants transferred the title of the Higbee building to the Community Investment Corporation ("CIC"), an organization that facilitates public building projects in the city of Youngstown.

{¶ 9} Sometime between December 6, 1997, and January 6, 1998, Mr. Terreri spoke with Gary Kubic, Mahoning County Administrator, about whether the contracts could be assigned to or renegotiated with CIC. Nothing was resolved in this conversation.

{¶ 10} On January 6, 1998, appellants returned $2,000,000 to the state of Ohio that had been earmarked for the project.

{¶ 11} Sometime in early April 1998, the CIC announced that it was not going to renovate the Higbee building and was ****925** going to build a smaller version of an office tower on property next to the Higbee building.

{¶ 12} Appellees filed a breach-of-contract complaint on April 17, 1998. Appellees

named four defendants: the Board of Mahoning County Commissioners ("board of commissioners"); Gary Kubic ("Kubic"), the county administrator; George Tablack ("Tablack"), Mahoning County Auditor; and Olsavsky–Jaminet Architects ("Olsavsky"). The first three of these defendants constitute the appellants in this appeal.

{¶ 13} Appellees' first cause of action involved an April 1996 contract for the removal of asbestos in the former Higbee building in downtown Youngstown. The second cause of action alleged a breach of the roof/atrium contract. The third cause of action alleged a breach of the demolition contract. The fourth cause of action alleged that appellants failed to release appellees' construction bond, which prevented them from pursuing other contracting work and which caused lost profits.

{¶ 14} On May 20, 1999, the trial court filed a judgment entry declaring that count one of the complaint had been settled and dismissing defendant Olsavsky from the case. Count one is not part of this appeal.

***101** {¶ 15} On June 30, 1999, the remaining defendants filed a motion for summary judgment. They argued that (1) the terms of the contracts prohibited appellees from recovering damages due to any delays preventing completion of the contract, (2) appellees alleged no facts indicating the actual amount of lost profits, requiring the dismissal of count four of the complaint, and (3) Mahoning County Auditor Tablack should be dismissed from the suit.

{¶ 16} On August 2, 1999, appellees filed their motion in opposition to summary judgment. Appellees argued that they were not seeking damages for delays, but, rather, damages from being prevented from doing any work on the contracts. Appellees also presented evidence of their profits and losses from 1992–1998.

{¶ 17} On August 16, 1999, appellants filed a reply to appellees' brief in opposition to summary judgment. Appellants argued that the contracts contained "termination for convenience" clauses that allowed appellants' to terminate the contracts for no reason upon ten days' written notice, and, if the contracts so terminated, would create liability only for the percentage of the work already completed plus costs related to the termination. Appellants argued that they were justified in assuming that the termination for convenience clauses were constructively invoked after appellees sent letters stating that they were withdrawing from the contract unless the contract price was increased by 15 percent. Appellants urged the court to use the "termination for convenience" clause as a basis for granting their motion for summary judgment.

{¶ 18} The summary judgment motion was presented to a magistrate. The magistrate denied the motion on August 25, 1999. The magistrate also denied the request to have Auditor Tablack dismissed from the case. Appellants filed objections to the magistrate's decision. The objections were overruled by the trial court on October 29, 1999. Appellants filed an appeal of that decision with this court, which was designated Appeal Case No. 99 CA 296. On February 16, 2000, this court dismissed the appeal for lack of a final, appealable order, in which we held that the denial of motion for summary judgment is not immediately appealable.

{¶ 19} The case went to bench trial on October 25–27, 2000.

{¶ 20} On December 11, 2000, the trial court rendered its judgment. The court found that appellants failed to terminate **926 the contracts in writing as required by the "termination for convenience" clauses. The court found that the "no damages for delay" clauses were inapplicable to a situation where appellants failed to issue a "notice to proceed." The court held that appellants' reliance on federal common law pertaining to "termination for convenience" did not apply because the contracts provided that Ohio law should apply.

*102 {¶ 21} The trial court held that appellants were in breach of both contracts, and awarded appellees $237,000 in lost profit damages for the atrium/roofing contract. The court awarded appellees $115,600 in lost profit damages for breach of the demolition contract. The court also awarded appellees $118,500 in lost bonding capacity damages for the delay in releasing the construction bond. Kubic and Tablack were dismissed from the case. The court held that prejudgment interest was inappropriate and awarded interest to be paid from the date of the judgment.

{¶ 22} On December 14, 2000, appellants filed this timely appeal. Appellees have filed a cross-appeal.

{¶ 23} On December 18, 2000, the trial court granted a stay of execution of the judgment pending appeal.

{¶ 24} Although appellants present six assignments of error for review, the alleged errors can be analyzed as three issues for review: (1) whether the "no damages for delay" clause protected appellants from being in breach of contract; (2) whether the "termination for convenience" clause protected appellants from being in breach of contract; and (3) whether appellees provided evidence to justify lost profit damages based on appellants' delay in returning the performance bond.

{¶ 25} Assignments of Error Nos. I and II deal with the "no damages for delay" and "termination for convenience" clauses of the contracts:

{¶ 26} "The trial court erred in finding that appellants breached the atrium and roofing contract and interior demolition contract.

{¶ 27} "The trial court erred in failing to find a constructive termination for convenience as a matter of law of both the atrium and roofing contract and the interior demolition contract."

{¶ 28} Appellants argue that at no time have they been in breach of contract due to (1) the "no damages for delay" clauses; (2) the legal theory of "termination for convenience"; and (3) the legal effect of three letters sent by appellees in October–December 1997, which declared that appellees were withdrawing from their contract responsibilities.

{¶ 29} Appellants first rely on Article Twelve, Section (b) of the contracts, which sets forth the "no damages for delay" provisions:

{¶ 30} "Any Contractor, Subcontractor, or other Contracting Party, shall have no claim against the County of Mahoning, or any of the agents or employees of the same, individually or collectively, for an increase in the contract price or a payment or allowance

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of any kind based upon any damage, loss, or additional expense, that such Contractor, Subcontractor, or other Contracting Party may ***103** suffer as a result of any delays, including delays not contemplated by the parties in prosecuting or completing the work under this contract irrespective of the cause for such delay. It is understood that such Contractor, Subcontractor, or other Contracting Party assumes all risks of delay in prosecuting or completing the work under this contract."

{¶ 31} Appellants also implicitly rely upon "Schedule 'B': Commencement and Completion of Work," which states that ****927** work could not start until appellants delivered to appellees a written notice to commence. Work was required to be completed in "120 Calendar Days from written notice to commence" with respect to the atrium/roofing contract, and was required to be completed in 90 days for the demolition contract. There is nothing in "Schedule B" or in any other part of the contracts setting any time limits on the delivery of the written notice to commence work.

{¶ 32} Appellants argue that the "no damages for delay" clauses protected them from being in breach during the period of September 18, 1997 (the date the contracts were signed) until May 11, 1998 (the date that appellants returned appellees' performance bonds). The more important date, though, in determining whether appellants were in breach of contract, is October 10, 1997. This is the date of appellees' first letter to appellants declaring withdrawal from the contract if the bid price was not increased by 15 percent. If appellants were not in breach during the period of September 18, 1997, to October 10, 1997, then the issue arises as to the effect of appellees' letter on appellants' liability under the contract. As will be shown below, appellees' letter of October 10, 1997, together with their subsequent letters, significantly affect the outcome of this case.

[1] {¶ 33} Appellees argue that the "no damages for delay" clauses do not apply where work is never commenced. Appellees' essential argument at trial and to this court is that appellants' delay in delivering a notice to proceed was not a delay contemplated by the "no damages for delay" clause. In other words, appellees contend that only delays that occurred after the start of construction were contemplated by the parties. Whether or not an event was contemplated by the contracting parties is determined first and foremost by examining the words of the contract. *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, 31 OBR 289, 509 N.E.2d 411, paragraph one of the syllabus.

[2] {¶ 34} The construction of written contracts is a matter of law that is reviewed de novo on appeal. *Long Beach Assn. v. Jones* (1998), 82 Ohio St.3d 574, 576, 697 N.E.2d 208.

[3] {¶ 35} In Ohio, a "no damages for delay" clause is a valid and enforceable contract provision. ***104** *Carrabine Constr. Co. v. Chrysler Realty Corp.* (1986), 25 Ohio St.3d 222, 228, 25 OBR 283, 495 N.E.2d 952. The reason for enforcing such clauses is to protect the public:

{¶ 36} " '[T]hey protect public agencies which contract for large improvements to be paid for through fixed appropriations against

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vexatious litigation based on claims, real or fancied, that the agency has been responsible for unreasonable delays.' " *DiGioia Bros. Excavating, Inc. v. Cleveland Dept. of Pub. Util., Div. of Water* (1999), 135 Ohio App.3d 436, 450, 734 N.E.2d 438, quoting *Owen Constr. Co., Inc. v. Iowa State Dept. of Transp.* (Iowa 1979), 274 N.W.2d 304, 306.

{¶ 37} In *Carrabine Constr.*, the Ohio Supreme Court upheld summary judgment in favor of Chrysler Corporation because Carrabine Construction Company had entered into a contract with a "no damages for delay" clause. The "no damages for delay" clause in *Carrabine Constr.* is remarkably similar to the clause at issue in the instant appeal:

{¶ 38} "The Contractor shall have no claim against the Owner for an increase in the contract price or a payment or allowance of any kind based on any damage, loss or additional expense the Contractor may suffer as a result of any delays in prosecuting or completing the work under the contract, whether such delays are caused by the circumstances set forth in ****928** the preceding paragraph or by any other circumstances. It is understood that the contractor assumes all risks of delays in prosecuting or completing the work under the contract." Id. at 227, 25 OBR 283, 495 N.E.2d 952.

{¶ 39} *Carrabine* held that the broad and comprehensive "no damages for delay" provision was valid and enforceable. Id. at 228, 25 OBR 283, 495 N.E.2d 952.

[4] **[5]** {¶ 40} Similarly, the "no damages for delay" clauses of the atrium/roofing contract and the demolition contracts are written with very broad language, and there is nothing in the clauses which restrict their application to events occurring only after a "notice to proceed" has been delivered. As in *Carrabine*, the "no damages for delay" clauses cover delays in both "prosecuting" and "completing" the contracts. The term "prosecuting" is not defined in the contracts. Undefined terms in a contract are interpreted using the plain, ordinary meaning of the words. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm* (1995), 73 Ohio St.3d 107, 108, 652 N.E.2d 684. Black's Law Dictionary defines "prosecute" as "1. To commence and carry out a legal action. 2. To institute and pursue a criminal action. 3. To engage in; carry on." Black's Law Dictionary (7th Ed.Rev.1999) 1237. From this definition it can be seen that to "prosecute" means to initiate as well as to follow through on a project or activity.

***105** {¶ 41} We conclude that the "no damages for delay" provisions in the two contracts sub judice encompassed delays in allowing appellees to begin work on the contracts. Therefore, appellants were not in breach merely because of such delays.

[6] **[7]** {¶ 42} Appellees might have been able to request damages for delay despite the "no damages for delay" provisions. There are several recognized exceptions to the enforceability of a "no damage for delay" clause. The exceptions consist of delay that " '(1) was not intended or contemplated by the parties to be within the purview of the provision; (2) resulted from fraud, misrepresentation, or other bad faith on the part of one seeking the benefit of the provision; (3) has extended such an unreasonable length of time that the party delayed would have been

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justified in abandoning the contract; (4) is not within the specifically enumerated delays to which the clause applies.' " *DiGioia Bros. Excavating, Inc.,* supra, 135 Ohio App.3d at 450–451, 734 N.E.2d 438, quoting *Jensen Constr. Co. v. Dallas Cty.* (Tex.App.1996), 920 S.W.2d 761, 770.

{¶ 43} While the record does not support that any of these exceptions existed, even assuming that all four exceptions apply, appellees cannot prevail here. Exceptions one, two, and four would have given appellees a basis to request damages for delay, but would not have justified the abandonment of the contracts. Only exception three would have allowed appellees to abandon the contracts. The record clearly reflects that appellees did abandon and repudiate the contracts by their letters dated October 10, 1997, October 23, 1997, and December 1, 1997. It is also apparent that, up to the point that appellees repudiated the contracts, any delays in delivering notices to proceed cannot be construed as unreasonable. Based on the above, the record reveals that appellees were in total breach of the contracts by anticipatory repudiation on December 1, 1997, and all subsequent events must be viewed in the light of that breach.

[8] **[9]** {¶ 44} "[W]hen a contracting party repudiates the contract prior to the time that such party's performance is due, an 'anticipatory breach' or, more precisely, an 'anticipatory repudiation' occurs, and the injured party has an immediate action ****929** for damages for total breach. Farnsworth, Contracts (1982) 627–628, Section 8.20." *Farmers Comm. Co. v. Burks* (1998), 130 Ohio App.3d 158, 172, 719 N.E.2d 980. The nonbreaching party may also rely on the anticipatory repudiation as a defense against a subsequent breach-of-contract claim. *Premium Enterprises, Inc. v. T.S., Inc.* (Feb. 9, 1999), 9th Dist. No. 2751–M, 1999 WL 61488; 13 Williston on Contracts (4th Ed.2000) 668, Section 39:37.

{¶ 45} "After acceptance, an attempted withdrawal amounts to an anticipatory breach of contract." Keyes, Government Contracts (2d Ed.1996) 307, Section 14.43.

***106** **[10]** **[11]** {¶ 46} One form of anticipatory repudiation occurs when a party declares that he or she will not perform the terms of the contract unless the contract price is increased. *Nuco Plastics, Inc. v. Universal Plastics, Inc.* (1991), 76 Ohio App.3d 137, 141, 601 N.E.2d 152. Anticipatory repudiation does not rescind a contract, but, rather, constitutes a breach of contract. *Am. Bronze Corp. v. Streamway Products* (1982), 8 Ohio App.3d 223, 228, 8 OBR 295, 456 N.E.2d 1295.

[12] {¶ 47} Notice of anticipatory repudiation gives the offended party the freedom to cancel its obligations under the contract. Farnsworth, Contracts (1982) 627–628, Section 8.20; *Farmers Comm. Co.,* supra, 130 Ohio App.3d at 172, 719 N.E.2d 980.

{¶ 48} "[W]hen one party to a contract repudiates the contract, or gives notice to the other party before the latter is in default that he or she will not perform, the nonrepudiating party is entitled to enforce the contract without previously performing or offering to perform the provisions of the contract in favor of the repudiating party. The repudiating party, by contrast, cannot demand performance from the nonrepudiating party, and may not sue

the nonrepudiating party for nonperformance. Finally, when an action is brought by the repudiating party, anticipatory repudiation is not an affirmative defense that is required to be specifically pleaded in response." (Footnotes omitted.) 13 Williston (4th Ed.2000) at 668, Section 39:37.

{¶ 49} Although appellants do not specifically refer to the phrase "anticipatory repudiation," their posture during the trial of this case was that appellees breached the contracts by the declarations contained in the October 10, 1997, October 23, 1997, and December 1, 1997 letters, and that appellants' subsequent actions were, in part, an effort to salvage and protect their rights under those contracts. Thus, appellants' legal theory at trial was, at least in part, based on the doctrine of anticipatory repudiation.

{¶ 50} If appellees were justified in abandoning the contracts, pursuant to the third factor mentioned in *DiGioia,* supra, then the law governing anticipatory repudiation would not apply. As previously stated, the third *DiGioia* factor requires a determination as to whether the contract delays extended such an unreasonable length of time that the aggrieved party was justified in abandoning the contract. *DiGioia Bros. Excavating, Inc.,* supra, 135 Ohio App.3d at 450–451, 734 N.E.2d 438.

{¶ 51} On review we must first determine the time frame within which to judge the reasonableness of appellants' actions in delaying the delivery of the notices to proceed. Logically, we first determine the date the contracts became binding on the parties: September 18, 1997. Although the parties had been ***107** involved in the bidding process from June 1996, there were no binding contracts until all the parties signed them on September 18, 1997.

****930** {¶ 52} The next significant event occurred on October 10, 1997, when appellees sent appellants their first letter demanding a 15 percent increase in the contract price. The entire letter reads as follows:

{¶ 53} "Dear Sirs:

{¶ 54} "Sixteen months have passed since this project was bid. For that reason, we are hereby requesting an increase of 15% on our base bid, if a notice to proceed is not issued by October 31, 1997. With this increase, we can extend our bid until June 30, 1998.

{¶ 55} "If neither a Letter of Understanding by which the county can commit to extending their option by these terms, nor a Notice to Proceed is issued as stated, please withdraw our bid and return our bond with its Power Of Attorney as soon as possible."

{¶ 56} The existence and content of this letter are not in controversy. In this letter, appellees state that they would waive any alleged error or breach caused by the delay in receiving a "notice to commence" if the notice was delivered by October 31, 1997. Appellees also appear to believe that they were not bound by the contracts and that the contracts were still in the bidding stage. The terms and assumptions contained within this letter have no basis in the language of the original contracts. Although the contracts did contain certain provisions for appellees to request adjustments in the contract price, none of those provisions allowed appellees to abandon the contracts. By denying

the finality and legitimacy of the contracts, appellees' October 10, 1997 letter constitutes their first step in repudiating the contracts.

{¶ 57} On October 23, 1997, appellees sent appellants another letter, the complete text of which states:

{¶ 58} "Dear Sirs:

{¶ 59} "As per today's conversation with the project architect, Mr. Ray Jaminet, we hereby extend our bid until November 14, 1997—with the understanding an equitable increase will be negotiated at the time the Notice to Proceed is issued.

{¶ 60} "Please understand that there is a home office overhead cost in holding a contract open. Therefore, we cannot hold this contract open indefinitely without the assurance we will be compensated for these costs. We will use an industry standard, such as the 'Eicheley Method' to calculate this cost along with changes in conditions of the work, labor increases and material increases.

***108** {¶ 61} "If by November 14, 1997, neither a Notice to Proceed nor a Letter of Understanding (accepting the 15% increase) is issued, please withdraw our bid and return our bond with the Power of Attorney."

{¶ 62} It is clear from this letter that appellees no longer intended to waive their objections to the alleged delay in receiving the notices to proceed. It is also clear that, if appellants issued the notices to proceed, appellees would interpret that step as an agreement to increase the contract price. Once again, appellees attempted to impose conditions and terms upon appellants that were not part of the original signed contracts. If appellants issued a notice to proceed after receiving the October 23, 1997 letter, they risked being liable for appellees' demand for a 15 percent increase in price. Therefore, appellees' October 23, 1997 letter constitutes the second step in their repudiation of the contracts.

{¶ 63} There was no evidence at trial revealing any customary time period for issuing a notice to proceed. This lack of evidence, though, is not particularly germane, ****931** because appellees' October 10, 1997 letter issued only one month after the contracts were signed gave appellants a deadline of October 31, 1997, to issue the notices to proceed. In essence, appellees were defining what they considered to be a reasonable time for appellants to issue the notice to proceed. Instead of waiting until October 31, 1997, appellees sent a letter on October 23, 1997, linking the notice to proceed with a promise to increase the price of the contract and declaring that they would repudiate the contracts if the notices to proceed and an increase in the price were not received by November 14, 1997. It was not reasonable for appellees to believe that appellants would issue a notice to proceed after October 23, 1997, without first resolving the issues raised by the October 23, 1997 letter. Then, in a letter dated December 1, 1997, appellees announced, without conditions, that they were unilaterally revoking their obligations under the contracts: "[P]lease withdraw our bid and return our bond, including the Power of Attorney." Thus, after December 1, 1997, it would have been a useless gesture for appellants to issue a notice to proceed, as appellees had made their repudiation of the contracts absolute. Therefore, the third and final step in appellees' repudiation of the

contracts occurred on December 1, 1997. When looking at this time line realistically from the time the parties signed these contracts, it is difficult if not impossible to determine that a delay occurred, much less that such delay could be called unreasonable.

{¶ 64} Based on appellees' letters, the record reflects that appellants were acting reasonably at all times in withholding the notice to proceed. Because any delays in issuing a "notice to proceed" that occurred prior to December 1, 1997, were reasonable, the third *DiGioia* exception does not apply and appellees had no legal basis to abandon the contracts. After December 1, 1997, any failure to ***109** deliver the notices to proceed were unequivocally caused by appellees' repudiation of the contracts on that date.

{¶ 65} Appellees also argue that the "no damages for delay" clauses were not enforceable because they were ambiguous and were drafted by appellants. Appellees contend that contract ambiguities must be construed against the drafter of the ambiguous sections, citing *Graham v. Drydock Coal Co.* (1996), 76 Ohio St.3d 311, 313, 667 N.E.2d 949. Although appellees correctly state a general rule of contract interpretation, their argument fails for two reasons. First, we have not found any material ambiguities in the contracts. Second, this argument is usually reserved to work in favor of unsophisticated parties, with unequal bargaining power, who are bound to the terms of an adhesion contract. *Wall v. Firelands Radiology, Inc.* (1995), 106 Ohio App.3d 313, 327, 666 N.E.2d 235. Appellees are seasoned government contractors:

{¶ 66} "Men who take million-dollar contracts for Government buildings are neither unsophisticated nor careless. Inexperience and inattention are more likely to be found in other parties to such contracts than the contractors, and the presumption is obvious and strong that the men signing such a contract as we have here protected themselves against such delays as are complained of by the higher price exacted for the work." *Wells Bros. Co. v. United States* (1920), 254 U.S. 83, 87, 41 S.Ct. 34, 65 L.Ed. 148.

{¶ 67} Based on the foregoing analysis, we conclude that appellants were protected by the "no damages for delay" provisions in the two contracts and that they are not liable for damages arising from any alleged delay or failure in delivering the notices to proceed.

****932 [13]** {¶ 68} There are additional reasons found in the record for sustaining appellants' first assignment of error. Even if appellants were not able to rely on the "no damage for delay" clauses, the trial court erred by failing to enforce the "termination for convenience" clauses of the contracts. Article 18(c) of the contracts states:

{¶ 69} "(c) For Convenience:

{¶ 70} "In addition to the provision of paragraph (a), the County shall have the right to terminate this Agreement without cause upon ten (10) days written notice to the Contractor, but in that event County shall pay to the Contractor a proportionate amount of the Agreement Price, as amended, based upon the percentage of the completion of the work under this Agreement and any amendment