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Looking Ahead to Avoid a Setback: Lessons Learned From Fourth Circuit's Denial of Subcontractor's Third Attempt to Re-Litigate Adjudicated Claims

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Construction disputes often arise from long-running projects involving multiple participants with varying roles governed by their separate contracts. Those contracts frequently contain inconsistent dispute resolution processes — some requiring litigation, others mandating arbitration.

As a result, parties must carefully consider which participants to include, what claims to assert, and where those claims should be brought before initiating any formal proceeding. The Fourth Circuit's recent decision in *Design Gaps Inc. v. Distinctive Design & Constr. LLC*, 162 F.4th 452 (4th Cir. 2025), underscores that failing to plan strategically on these issues at the outset can forfeit a claimant's ability to pursue certain claims or obtain relief from key parties altogether.

Background

Arbitration

Design Gaps Inc. arose from a home renovation project gone wrong. The homeowners hired a contractor to renovate their home, which in turn subcontracted with Design Gaps, a custom cabinetmaker and designer, to perform work relating to cabinets that would be installed as part of the renovation. After relations with Design Gaps broke down due to what the homeowners viewed as extensive delays, the homeowners "walked away from their contracts" with Design Gaps and hired a new contractor to complete that work. The homeowners and general contractor shared certain copyrighted drawings prepared by Design Gaps with the new contractor.

Numerous disputes arose between the homeowners, general contractor, and cabinetmaker subcontractor arising out of various breaches of contract and intellectual property-related claims. Consequently, the homeowners and general contractor initiated an arbitration against the subcontractor for damages related to hiring a replacement subcontractor to finish the work. Counterclaims followed against the arbitral claimants as well as crossclaims against various nonparties, including the replacement subcontractor and the individual owners of the general contractor and replacement subcontractor. The arbitrator dismissed the crossclaims because none of the nonparties were subject to an arbitration agreement. The arbitrator then ruled against the subcontractor on the merits concerning the remaining counterclaims and issued a final award in favor of the homeowners and general contractor. The award was later confirmed in state court.

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Post-Arbitration Litigation

Despite the award being confirmed, the subcontractor filed a new lawsuit in the U.S. District Court for the District of South Carolina against the same arbitral parties and nonparties, alleging identical and substantially similar claims. In response, both the arbitral parties and nonparties moved to dismiss the case on grounds that the claims and issues related to those claims were already adjudicated in the arbitration. The trial court agreed, dismissing the claims, and the appeal to the Fourth Circuit followed.

Appeal

On appeal, Design Gaps argued that the trial court improperly dismissed its complaint against the defendants who were not parties to the arbitration because those parties had no standing to say that the claims against them *in litigation* were already adjudicated in arbitration. The Fourth Circuit disagreed, holding that applicable claim preclusion principles extended to the nonparties considering that they had substantial ties to the claims and issues presented in the arbitration. Accordingly, Design Gaps was not allowed to have a second chance to re-litigate issues decided in the arbitration against the arbitral nonparties.

Why the* Design Gaps *Decision Matters

Design Gaps, Inc. offers important reminders for both contract drafting and litigation strategy. First, ensuring alignment of dispute resolution procedures among contracts can help avoid having to both litigate and arbitrate disputes arising out of the same project. Ensuring a single forum to resolve all project-related disputes can help save costs and avoid inconsistent results. Second, before initiating formal dispute resolution, it is critical to evaluate all the potential parties for inclusion, all potential claims to pursue, and the appropriate forum for each stakeholder. Where the various relevant contracts require different dispute forums, claimants should also consider whether they may request a stay of any litigation pending the resolution of an arbitration that involves substantially similar issues. Failing to strategically consider these issues prior to a lawsuit could later prove to be fatal to a claimant's ability to pursue certain claims or obtain relief from key parties altogether.

Troutman Pepper Locke attorneys are well positioned to advise clients on construction contract drafting and negotiations, as well as in navigating construction project disputes with all types of project stakeholders.

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