COURT OF APPEALS OF VIRGINIA

Record No. 0606-25-4

SAITECH, INC.
v.
VENESCO, LLC

Present: Judges Raphael, Lorish and Frucci

Argued at Arlington, Virginia

Opinion Issued August 18, 2026*

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Michael F. Devine, Judge

David E. Murphy (Laura Golden Liff; Matthew L. Devendorf; McCandlish & Lillard; Miles & Stockbridge P.C., on briefs), for appellant.

Matthew E. Feinberg (L. Akinyi Orinda; Todd M. Reinecker; PilieroMazza PLLC, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE STEVEN C. FRUCCI

SaiTech, Inc., sued Venesco, LLC, alleging breach of the agreed division of work in their joint venture, Venesco & SaiTech Joint Venture, LLC ("Joint Venture"), and fraudulent misrepresentation regarding how the work would be divided. Following a bench trial, the circuit court ruled in Venesco's favor on both counts. On appeal, SaiTech contends that Venesco breached the Joint Venture agreement (the "Agreement"), which SaiTech argued required a specific allocation of work. Finding no error, we affirm.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

BACKGROUND[1]

Under familiar appellate principles, the evidence is summarized in the light most favorable to the prevailing party at trial, Venesco. *See Moncrieffe v. Deno*, 76 Va. App. 488, 496 (2023).

SaiTech and Venesco are companies with experience in competing for and servicing federal government contracts. SaiTech previously participated and successfully graduated from the Small Business Administration (SBA) 8(a) Business Development Program,[2] and it had about 185 employees in 2017. Due to its size, SaiTech no longer qualified as an 8(a) certified small business. In contrast, Venesco was a certified SBA 8(a) small business, engaging mostly in administrative general consulting and seeking to grow into IT consulting.

In 2017, SaiTech and Venesco negotiated the Agreement, hoping to win the bid for the NASA Headquarters Information Technology Support Services Contract (the "Prime Contract"). The Prime Contract was an SBA 8(a) set-aside contract, so NASA would award the contract to the SBA, which then would issue the award to the most competitive 8(a)-eligible offeror. Subject to compliance with SBA regulations, an 8(a)-qualified small business could enter a joint venture with a non-8(a) firm to compete for awards.

To comply with "SBA policies and regulations," the parties drafted the Agreement and submitted it to the SBA for approval. The SBA required certain mandatory terms in the Agreement, including that the 8(a) participant must: (a) be manager; (b) administer contract performance; (c) own at least 51% of the joint venture; and (d) receive profits at a rate at least

---

[1] The record is partially sealed. "To the extent that this opinion mentions facts found in the sealed record, we unseal only those specific facts, finding them relevant to the decision in this case. The remainder of the previously sealed record remains sealed." *Levick v. MacDougall*, 294 Va. 283, 288 n.1 (2017).

[2] The purpose of the 8(a) program is to help small and disadvantaged businesses compete in the American economy through business development. 13 C.F.R. § 124.1.

equal to the amount commensurate with the work it performs. *See* 13 C.F.R. § 124.513(c). SBA regulations required the 8(a) participant to perform "at least 40% of the total done by all partners," and the 8(a) participant's share must be substantive and not just administrative. 13 C.F.R. § 124.513(d)(2). In addition, a joint venture agreement must include a general description of anticipated responsibilities, "including ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements." 13 C.F.R. § 124.513(c)(7).

The Joint Venture's 2017 proposal letter stated that the "Joint Venture will perform at least 60% of the work on its own and will subcontract only the work, which requires specialized set of skills not within Venesco or SaiTech capability." It included reference to three teaming partners, which would be subcontractors to the Joint Venture partners, given their unique skills. The proposal's cost volume anticipated about 33% of the work going to the teaming partners and more than 66% to the joint venturers. There would also be "Other Direct Cost" (ODC) contractors, and the joint venturer managing the ODC contractors would earn a markup.

The parties executed the first Agreement in 2017, and re-executed it in 2018, at SBA's request for minor revisions. The Agreement formed the Joint Venture, which sought to serve as the prime contractor for task orders awarded under the Prime Contract. The Joint Venture lacked its own direct employees. Under the Agreement, Venesco would be the Managing Venturer of the Joint Venture, and SaiTech would be the Partner Venturer.

Section 14 of the Agreement titled "Performance of Work" provided:

> For any 8(a) contract, including those between mentors and protégés authorized by 13 C.F.R. § 124.520, the Joint Venture must perform the applicable percentage of work required by 13 C.F.R. § 124.510. As such, the performance of work will be as follows:

> The Managing Venturer will perform Project Management, Project Financial Control. The Partner Venturer will perform Recruitment, Training, Technical Expertise.
>
> The Managing Venturer will perform at least forty five percent (45%) of the work performed by the Joint Venture and Partner venture will not perform more than fifty five percent (55%).

In December 2017, the SBA requested that the Joint Venture provide more information before the Joint Venture could be approved as an 8(a) certified entity. In response to that request, SaiTech produced a document named "List of Work Share by Labor Category and Firm," which showed "significant overlap" in the type of work that SaiTech and Venesco would perform. The list showed that both companies would provide labor in 15 general categories, Venesco solely would provide labor in 5 categories, and SaiTech solely would provide labor in 6 categories. The list was inconsistent with the labor categories in the Agreement's Section 14 because it did not exclusively allocate "Recruitment, Training, [and] Technical Expertise" to SaiTech or exclusively allocate "Project Management[and] Project Financial Control" to Venesco.

NASA awarded the Prime Contract to the Joint Venture in 2019. NASA directed the Joint Venture to engage certain vendors during the transition away from the incumbent contractor. During the project's transition, SaiTech's vice president (VP) served as bid-transition manager. He worked to ensure "continuity of operations" by reaching out and employing 150 existing NASA employees. The VP also engaged about 20 third-party specialized vendors, most of whom were already working for a prior NASA contract and had special skills. SaiTech emailed Venesco that these vendors "[b]asically . . . will be ODC subs." NASA directed that most of these vendors be billed as ODCs.

NASA originally had estimated that these ODCs would cost about $14.1 million—a figure that the Joint Venture included in its proposal. As managing partner, Venesco processed and paid all ODCs under the Joint Venture, as part of its responsibility for contract administration, and it added general and administrative costs to the ODC invoices. The Joint Venture's proposal-cost volume had stated that all ODCs would be "proposed as being procured through JV Member, Venesco LLC." SaiTech did not administer (as opposed to manage) the ODCs.[3] When SaiTech sought clarification about ODCs, the SBA advised that ODCs were part of contract administration and "not part of workshare," and certain vendors were billed as ODCs as NASA requested, but vendors were not subcontractors. A 2017 email indicated that Venesco told SaiTech that the 45% minimum percentage applied "on labor," but did not include ODCs.

In April 2019, after the parties began to work under the Prime Contract, they disagreed about their respective workshares and how to evaluate workshare percentages. Venesco became concerned that its workshare hovered too close to the minimum regulatory threshold—at least 40% of the Joint Venture's work. 13 C.F.R. § 124.513(d)(2). Venesco emailed SaiTech to "slow down on hiring additional staff under SaiTech until the percentages of Direct Labor conform to the JV Agreement of 55% for SaiTech and 45% for Venesco." But SaiTech did not want to slow its hiring and asserted that Venesco's share included ODC vendor work. SaiTech also contended that workload percentages were based on the total Prime Contract cost, not just direct labor. It argued that Section 14 of the Agreement entitled SaiTech to perform *all* recruitment, training, and technical-expertise direct labor under the Prime Contract, until it reached the 55% cap. SaiTech further argued that Venesco should not have used ODCs for any direct labor; in its view, ODCs were not appropriate for technical labor and cost NASA more.[4]

[3] SaiTech received fringe, overhead, G&D, and profit for management of various ODC vendors.

[4] SaiTech argued that Venesco had subcontracted out direct labor and labeled it ODC and that Venesco concealed information about its managed ODCs from SaiTech.

Venesco argued that the contractual workload percentages applied only to work performed by the Joint Venture partners.[5] According to Venesco, using ODCs as "highly specialized vendors" was necessary where the Joint Venture lacked the expertise to do the work. Some of the vendors were "so entrenched into NASA" for the 15 years before NASA awarded the Prime Contract to the Joint Venture that Venesco viewed them as critical resources. Venesco contended that SaiTech's interpretation conflicted with the Agreement's plain language and with the parties' shared understanding of Section 14 at execution.

In the fall of 2019, NASA sought to reduce ODC costs, and the parties considered ways to do so. The parties "identified four vendors that could be replaced with manageable difficulty and three vendors with substantial difficulty." Evidence showed that the other vendors could not be replaced. Difficulties in replacing the ODCs included contractual non-compete and termination clauses, and reluctance of employees to leave their existing employment to work for SaiTech or Venesco. Venesco's witness testified that these difficulties caused much of the difference between the projected and actual ODC costs incurred and that the difference was not the result of a discretionary action. Testimony also suggested that neither party reliably could have predicted the actual ODC volume the Prime Contract would require.

Trial testimony established that NASA spent about $112 million on the Prime Contract over five years, and ODC vendors earned about $29,695,000 of the $112 million. Evidence showed that about 60.9% of NASA's total cost under the Prime Contract related to direct labor

[5] Emails between the parties in 2017 stated that "Subcontractors will be Subs to the JV and not SaiTech or Venesco. This will allow Sai[T]ech to perform 55% and Venesco 40% after the subs are paid by the JV." Emails further provided that Venesco "would be willing to go 55/45."

performed by the Joint Venture. Of the Joint Venture's total direct labor, SaiTech performed about 55.7% and Venesco performed 44.3%.[6]

The evidence showed that the labor categories of "Project Management" and "Financial Control" comprised less than 40% of the Joint Venture's work, and 85% of the Prime Contract was technical in nature. Witnesses testified that technical work constituted 85%, so administrative tasks did not exceed 15%. Given the large percentage of technical work, both parties understood when executing the Agreement that Venesco would have to perform considerable technical work to reach its 40% regulatory minimum. Venesco was supposed to be given some technical work because it needed to learn; the main requirement of an 8(a) joint venture was that "8(a) companies have to get some experience." The initial staffing plan did not expressly limit Venesco's work to "Project Management" and "Project Financial Control," or exclusively allocate "Recruitment, Training, and Technical Expertise" to SaiTech. Typically, staffing plans were determined when task orders were awarded.

After trial, the circuit court entered judgment for Venesco. The circuit court concluded that the Agreement's workshare percentage clause was unambiguous and imposed a maximum, rather than a minimum, on SaiTech's workshare. The court determined that the percentage applied to work performed by the Joint Venture partners—Venesco and SaiTech—not work performed by third-party subcontractors or vendors. So it concluded that the percentage clause was satisfied if SaiTech received any percentage of work between 1% and 55%, and the evidence proved that SaiTech received slightly more than 55% of the work performed by the Joint Venture. Thus, the court held that Venesco did not breach the percentage clause of the Agreement.[7]

---

[6] If ODC vendor direct labor had been counted as Joint Venture work, then SaiTech's share would have been about 36%.

[7] The circuit court also held that there was no fraudulent misrepresentation, but SaiTech does not appeal that ruling.

The circuit court found a latent ambiguity in Section 14's labor category descriptions, and it considered parol evidence to resolve the ambiguity. Based on testimony and evidence, the circuit court concluded that the labor categories were not "binding and exclusive" and were never intended to "dictate how the Parties actually would meet performance of work requirements." Instead, the labor categories were intended to provide only a "general description of anticipated responsibilities." The circuit court found that SaiTech understood that Venesco was not limited to performing project management and financial control and that Venesco would also have to provide technical labor. The court also determined that both parties "understood that Venesco could not be limited to administrative and ministerial work" because that would not satisfy the regulatory minimum and would defeat the program's purpose of affording a small, disadvantaged business like Venesco the opportunity to obtain technical performance experience. Further, the circuit court found that at the time the parties executed the Agreement, they knew they had to comply with SBA regulations to secure and maintain the Prime Contract, and as such, the parties knew the labor category descriptions "could not be binding and exclusive." In accordance with its rulings, the circuit court held that Venesco did not breach the Agreement. SaiTech appeals.

ANALYSIS

"Interpretation of a contract is a question of law that is reviewed de novo." *Palmer & Palmer Co., LLC v. Waterfront Marine Constr., Inc.*, 276 Va. 285, 289 (2008). "When a contract is clear and unambiguous, it is the court's duty to interpret the contract, as written." *Id.* We look to the "intention of the parties as expressed by them in the words they have used." *RECP IV WG Land Invs. LLC v. Capital One Bank (USA), N.A.*, 295 Va. 268, 283 (2018) (quoting *Schuiling v. Harris*, 286 Va. 187, 192 (2013)). "When the terms in a contract are clear and unambiguous, the contract is construed according to its plain meaning. Words that the parties used are normally given their usual, ordinary, and popular meaning." *Id.* (quoting *City of Chesapeake v. Dominion*

SecurityPlus Self Storage, L.L.C., 291 Va. 327, 335 (2016)). In other words, we must construe a contract without adding terms that the parties did not include. *See id.*

"[W]hen a contract is ambiguous, the Court will look to parol evidence in order to determine the intent of the parties." *Eure v. Norfolk Shipbuilding & Drydock Corp.*, 263 Va. 624, 632 (2002). Language in a contract is ambiguous "when 'it may be understood in more than one way.'" *Id.* (quoting *Granite State Ins. Co. v. Bottoms*, 243 Va. 228, 234 (1992)). To determine whether language is ambiguous, we look at the words at issue within the four corners of the agreement. *See id.* at 631. A latent ambiguity arises when "anyone familiar with the real-world context of the agreement would wonder what it meant with reference to the particular question that has arisen." *FDIC v. W.R. Grace & Co.*, 877 F.2d 614, 620 (7th Cir. 1989); *see also Baliles v. Miller*, 231 Va. 48, 59 (1986) (holding that a latent ambiguity exists when the real meaning is concealed and is only brought into existence when "those words are brought into contact with collateral facts" (quoting *Hawkins v. Garland's Adm'r*, 76 Va. 149, 152 (1882))).

The circuit court's factual findings "will not be disturbed on appeal unless they are plainly wrong or without evidence to support them." *Collins v. First Union Nat'l Bank*, 272 Va. 744, 749 (2006). When there is a mixed question of fact and law, we defer to the circuit court's factual findings, but we review the application of law to those facts de novo. *Id.*

I. The circuit court did not err in identifying and resolving a latent ambiguity in the labor-categories clause.

SaiTech argues that Section 14 unambiguously assigns it exclusive rights to perform all "Recruitment, Training, and Technical Expertise" labor up to a 55% cap of the total work under the Prime Contract. We disagree. First, that is not what the plain language of the Agreement states. Section 14's 55% reference is a maximum, not a guaranteed minimum, and we cannot add words to the Agreement. *See RECP IV WG Land Invs.*, 295 Va. at 283 (holding that we construe a contract without adding terms). Second, SaiTech's argument does not account for how Venesco could perform at least 45% of the Joint Venture's work if it were restricted to Section 14's assigned labor categories.

As the circuit court correctly noted, the Agreement allocated work both by percentage and labor category, without expressly subordinating one measure to the other. It assigned Venesco at least 45% of the Joint Venture's work, but it only assigned Venesco the labor categories of project management and financial control, which accounted for only about 15% of the Joint Venture's work.[8] The express language does not resolve how Venesco could perform at least 45% of the work, when 85% of the work was technical and Section 14 assigned technical work to SaiTech. The ambiguity of applying the labor category provision, given the two measures (percentages versus labor categories) while meeting the regulatory requirement, demonstrated a latent ambiguity.

Due to the latent ambiguity, the circuit court correctly considered parol evidence. That evidence showed that both parties understood that Section 14's labor categories were not controlling or exclusive. At trial, SaiTech agreed that Venesco's role was not limited to project management and financial control and would include some technical labor. The work-share list that SaiTech created to present to the SBA allocated many technical positions to Venesco. In addition, both parties agreed that 8(a) programs are intended to help small and disadvantaged businesses develop their capabilities and that 8(a) participants must meet specific eligibility criteria. Considering the SBA's purpose and percentage requirements, and the work-share list the parties sent to the SBA, the evidence supports the circuit court's finding that the parties knew the labor categories were not binding or exclusive.

[8] The evidence established that 85% of the work was technical, so 15% remained for Venesco's assigned categories.

SaiTech's counterargument effectively asks this Court to add terms to the Agreement, which is something we may not do. *See City of Chesapeake v. States Self-Insurers Risk Retention Grp., Inc.*, 271 Va. 574, 578 (2006) (holding that contracts are construed "without adding terms that were not included by the parties"). According to SaiTech, it is entitled to all "Recruitment, Training, and Technical Expertise" direct labor until it reaches a 55% cap, when such work then shifts to Venesco. But no express language grants SaiTech a minimum of 55% of the workshare; there is only a 55% ceiling on SaiTech's share. Nor is there any shifting provision tied to any percentage. Thus, as the circuit court noted, SaiTech's argument required "an inference" because the Agreement did not "say that."

II. The circuit court did not err in holding that Venesco did not breach the Agreement.

SaiTech contends that Venesco breached the Agreement by subcontracting technical labor to managed ODCs. It argues that neither party anticipated that technical direct labor would be performed by the ODCs and that Section 14 did not permit Venesco to subcontract over $30 million in technical direct labor—its assigned labor category—to third parties. Considering ODC involvement, SaiTech also disputes the circuit court's finding that it performed more than 55% of the Joint Venture's work.

But the Agreement's plain language does not promise 55% to SaiTech or exclude ODCs; it guarantees SaiTech *no more than* 55%—which is a cap not a minimum. It also does not state that the Joint Venture would provide all direct labor, and the evidence demonstrated that all parties expected use of the teaming partners and certain ODCs. The evidence showed that the parties anticipated the Joint Venture would perform more than 66% of the work, while subcontractors would perform about 33%. Using ODCs was not indicative of bad faith because many providers were critical to the project and resistant to leaving their employers.

Finally, the evidence established that the Joint Venture's work meant direct labor by SaiTech or Venesco, not ODC work. In 2017, Venesco emailed SaiTech that the 45% minimum percentage applied "on labor," exclusive of ODCs. And when SaiTech sought clarification about ODCs, the SBA stated that ODCs were part of contract administration and "not part of workshare," and certain vendors were billed as ODCs at NASA's express request, but vendors were not subcontractors. Accordingly, the Agreement's percentages did not contemplate ODCs, and even if they did, the Agreement did not guarantee any minimal amount of work to SaiTech. Excluding ODCs, SaiTech performed slightly more than 55% of the work, and it performed about 36% of the work including ODCs. Either way, SaiTech did not show a breach of the Agreement because the Agreement did not guarantee it a minimum amount of work.

CONCLUSION

For the foregoing reasons, the circuit court's judgment is affirmed.

Affirmed.