IN THE SUPREME COURT OF GUAM

OVITA CRUZ BROWN, as personal representative of the estate of Kenneth Walter Gogue, and as guardian of her minor child, DYLLIN JAY CRUZ GOGUE, MICHAEL D. LANGDON, MICHELLE LANGDON, AND CIRCLE "A" EXCAVATION CO.,
Plaintiffs-Appellees,

vs.

DILLINGHAM CONSTRUCTION PACIFIC BASIN LTD.,
Defendant-Appellant.

OPINION

Supreme Court Case No.: CVA02-004
Superior Court Case No.: CV1792-00

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Appeal from the Superior Court of Guam
Argued and submitted on September 3, 2002
Hagåtña, Guam

Appearing for Plaintiffs-Appellees:
Cesar C. Cabot, Esq.
Law Office of Cesar C. Cabot
BankPacific Bldg., Second Flr.
825 S. Marine Dr.
Tamuning, GU 96913

Michael Cullen, Esq.
Olsen & Associates
11314-4th Ave. W., Suite 111
Everett, WA 98204

Appearing for Defendant-Appellant:
Kevin Fowler, Esq.
Dooley Lannen Roberts & Fowler LLP
Suite 201, Orlean Pacific Plaza
865 S. Marine Dr.
Tamuning, GU 96913

BEFORE: PETER C. SIGUENZA, JR., Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice.

CARBULLIDO, J.:

[1] Defendant-Appellant Dillingham Construction Pacific Basin Ltd. (hereinafter "Dillingham") seeks an interlocutory review of the trial court's partial summary judgment in favor of Plaintiff-Appellee "Circle A" Excavation Co. (hereinafter "Circle A"). The trial court held that Circle A's claims were not barred by either the contractual limitation period clause or the agreement to arbitrate clause. We grant interlocutory review and reverse the trial court's decision.

I.

[2] Dillingham was the General Contractor for the construction of the Micronesia Mall Expansion Phase II project and was "responsible for all aspects of excavation, installation and erection of the large cement structure." Appellant's Excerpts of Record, p. 3 (Complaint, October 27, 2000). On September 4, 1997, Dillingham executed an Agreement of Subcontract (hereinafter "Subcontract") valued at $1,839,783.00 with Circle A, a Guam corporation owned by Plaintiff-Appellees Michael and Michelle Langdon. Circle A's main responsibility under the Subcontract was "for the excavation of soil and other materials underneath large, pre-fabricated cement beams and the structures being erected by" Dillingham. The General Conditions of the Agreement of Subcontract (hereinafter "General Conditions") contained several standard form clauses, including an indemnity clause, an arbitration clause, and a time limitations clause.

[3] This case arises out of an incident, which occurred on October 29, 1998, when a Circle A employee, Kenneth Walter Gogue (hereinafter "Gogue"), was fatally injured while working around and underneath the cement structure built by Dillingham. Circle A alleged that the accident was a result of Dillingham's improper installation of a double tee beam, which was approximately thirty feet in length and placed across the vertical structures and the angle irons that were used to support the structure. As a result of the unstable and incorrectly supported structure, the beam collapsed.

In addition to Gogue's death, the accident also damaged several pieces of Circle A's equipment, including the following: a PC-220 excavator, a 555D backhoe, and a soil impounder.

[4] On October 27, 2000, a multi-plaintiff suit against Dillingham was filed. The suit was filed approximately two years after the accident and over one year after the project was substantially completed on June 30, 1999.[1] Appellant's Excerpts of Record, pp. 17-18 (Robertson Decl. ¶ 4 and Ex. A). The Complaint contained the following four claims for relief: (1) Negligence Against the Defendant; (2) Gross and/or Intentional Negligence; (3) Negligence of the Defendant; and, (4) Breach of Contract. Essentially, the Complaint can be bifurcated into two parts. The first part of the Complaint, or the first and second claims for relief, concerns Plaintiff Ovita Brown's (hereinafter "Brown") wrongful death action against Dillingham. Brown, as Gogue's alleged putative spouse, and guardian of their minor child, Dyllin Jay Cruz Gogue, sued as personal representative of Gogue's estate. The second part of the Complaint, which is the matter before this court, involves the third and fourth claims, namely, Circle A's breach of contract and negligence claims for equipment damages and other losses stemming from the accident.

[5] On December 15, 2000, Dillingham filed a Motion for Summary Judgment addressing all four claims for relief. On January 7, 2002, the trial court issued a Decision and Order, which, in effect, granted Dillingham's summary judgment motion against Brown with respect to the first and second claims for relief, but denied Dillingham's summary judgment motion against Circle A with regard to the third and forth claims for relief. Specifically, the trial court held that "Brown [was]

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[1] The parties do not dispute the date of substantial completion. Pursuant to section 1.1 of the General Conditions, substantial completion is defined as:

> Substantial Completion of the Project as defined in the Prime Contract, or if not defined therein, then the stage in the progress of the work required of Contractor under the Prime Contract when such work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy and utilize such work for its intended purpose.

Appellant's Excerpts of Record, p. 26 (General Conditions). In addition to the substantial completion date of June 30, 1999, the Certificate of Occupancy was issued on July 19, 1999. Appellants Excerpts of Record, p. 19 (Certificate of Occupancy).

not entitled to recover under the wrongful death act because she [was] not an heir or putative spouse under Guam law," and that "the wrongful death claims of Brown and Dyllin are barred by the exclusive remedy provision of the worker's compensation act." Appellant's Excerpts of Record, p. 41 (Decision and Order, January 7, 2002). However, the trial court held that Circle A's claims were not barred by either the "the contractual limitation period under the [S]ubcontract [or] by its agreement to arbitrate all disputes arising out of that [S]ubcontract." Appellant's Excerpts of Record, p. 42 (Decision and Order, January 7, 2002). Pursuant to Rule 4(a) of the Guam Rules of Appellate Procedure (hereinafter "GRAP"), Dillingham timely filed an interlocutory appeal on January 30, 2002 appealing that part of the trial court's Decision and Order, which held that Circle A's claims were not barred by either the contractual limitation period or the agreement to arbitrate clause.

II.

[6] "The standard of review in an interlocutory appeal generally is whether the . . . [trial] court abused its discretion in granting or denying the requested relief." *Feldheim v. Sims*, 760 N.E.2d 123, 129 (Ill. App. Ct. 2001); *Schroeder Murchie Laya Assocs. v. 1000 West Lofts, LLC*, 746 N.E.2d 294, 297 (Ill. App. Ct. 2001). We review contract construction *de novo*. *See Apana v. Rosario*, 2000 Guam 7, ¶ 9 (citations omitted). "In interpreting a contract, the language governs if clear and explicit and [does] not involv[e] [an] absurdity." *Ronquillo v. Korea Auto., Fire, & Marine Ins. Co.*, 2001 Guam 25, ¶ 10 (citing Title 18 GCA § 87104 (1992)).

III.

A. Jurisdiction

[7] Before discussing the substantive issues presented by the parties in this appeal, we are initially called upon to address the threshold matter of whether this court should exercise its discretion and conduct an interlocutory review. Circle A challenges interlocutory review of this case

on the following two grounds: (1) Dillingham's failure to adhere to the requirements of GRAP 12; and, (2) Dillingham's failure to show that interlocutory review is proper under any of the three grounds outlined in 7 GCA § 3108(b).

[8] Circle A's first challenge to the interlocutory review of this appeal is Dillingham's failure to follow the requirements of GRAP 12(a), which provides:

> **Stay Must Ordinarily Be Sought in the First Instance in Superior Court; Motion for Stay in Supreme Court**.
>
> Application for a stay of the judgment or order of the Superior Court pending appeal, or for approval of a supercedes bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Superior Court. A motion for such relief may be made to the Chief Justice of the Supreme Court, but the motion shall show that application to the Superior Court for the relief sought is not practicable, or that the Superior Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Superior Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties.

Guam R. App. P. 12(a). Circle A argues that Dillingham "should have asked for [the] Superior Court's . . . ruling on whether this matter qualified for review" before seeking review in this court. Appellee's Brief, p. 8. After reviewing the Guam statutes, we find Circle A's argument unpersuasive. First, GRAP 12(a) is inapplicable to the present case. Circle A itself admits to the weakness of its argument by recognizing that GRAP 12(a) "do[es] not directly address the actions Dillingham should take in requesting an interlocutory review." Appellee's Brief, p. 8. Second, Title 7 GCA § 3108(b), the provision that confers upon the Supreme Court the discretion to conduct an interlocutory review over non-final orders or judgments, does not direct the appellant to request for a stay or an injunction at the trial court level, before requesting for an interlocutory review in this court. Furthermore, there is no authority, whether statutory or otherwise, which supports Circle A's contention. Consequently, Dillingham's alleged failure to request the trial court for a *stay* or *injunction* pending appeal does not preclude us from conducting an interlocutory review of the case.

[9] Circle A's next challenge to interlocutory review is that Dillingham's appeal fails to meet any of the three grounds set forth in 7 GCA § 3108(b), which would justify interlocutory review. We disagree. Title 7 GCA § 3108(b) delineates the three instances when this court could exercise interlocutory review over a non-final order and states in relevant part:

> (b) Interlocutory review. Orders other than final judgments shall be available to immediate appellate review as provided by law and in other cases only at the discretion of the Supreme Court where it determines that resolution of the questions of law on which the order is based will:
>
> (1) Materially advance the termination of the litigation or clarify further proceedings therein;
>
> (2) Protect a party from substantial and irreparable injury; or
>
> (3) Clarify issues of general importance in the administration of justice.

Title 7 GCA § 3108(b) (1994). In the present case, the two issues that have been raised for this court's consideration are the applicability of both the contractual period of limitation clause and the arbitration clause contained in the General Conditions. As we explain below, we are convinced that this case is ripe for interlocutory review.

[10] First, the resolution of whether the contractual period of limitation applies will "materially advance the termination of the litigation or clarify further proceedings therein . . . ." 7 GCA § 3108(b)(1); *see also Guam Yun Shan Enters., Inc. v. Shenzhen Dev. Bank, Ltd.*, 1998 Guam 21, ¶ 3 (granting interlocutory review on a "summary judgment dismissal and denial of the motion for leave to amend" because "[r]eview of . . . [the] matter will serve to advance the termination of the litigation and clarify further proceedings."); *Stenger Indus., Inc. v. Int'l Ins. Co.*, 74 B.R. 1017, 1019-20 (Ga. 1987) (granting interlocutory review in the determination of whether a limitations period applied and whether the trial court properly denied summary judgment). A finding by this court that the one year period of limitation contained in the General Conditions applies will effectively bar Circle A's suit because the suit was brought one year after the substantial completion of the project. *Solomon v. A. Julian Inc.*, 450 A.2d 130, 132 (Pa. Super Ct. 1982) ("The contractual period of limitation, if timely raised, operates to effectively bar an otherwise valid, but stale, claim. . . . it constitutes an affirmative defense, the same as a statutory period of limitation . . . ."); *see also*

Gustine Uniontown Assocs. v. Anthony Crane Rental, Inc., 786 A.2d 246, 250 (Pa. Super Ct. 2001) (finding that interlocutory review was proper in determining which proper statute of limitation to apply because "an immediate appeal may enhance the prospects of settlement and that a later appellate disposition might result in remand for duplicative and costly re-litigation of complex trial issues.").

[11] We find persuasive the case of *Kilgore v. Barnes*, 490 So. 2d 895 (Miss. 1986), where the Mississippi Supreme Court granted interlocutory review to consider a statute of limitations issue. *Kilgore*, 490 So. 2d at 896; *see also Am. Transp., Inc. v. Thompson*, 460 S.E.2d 298, 299 (Ga. Ct. App. 1995) (granting interlocutory review in determining whether the trial court correctly held that the amended complaint was not barred by the statute of limitations); *Stenger Indus.*, 74 B.R. at 1019 (granting interlocutory review in the determination of whether the statute of limitation period applied and whether the trial court properly denied summary judgment). The *Kilgore* court provided the following rationale why such an issue was proper for interlocutory review:

> The present case, we feel, is an appropriate one for an interlocutory appeal. Should the appellants be successful this Court will, by its decision, settle the controlling principle of law in this case which is unclear and which will also affect other pending similar cases. The trial courts will then be able to act with reasonable assurance as to which statute of limitation applies and thereby prevent inconsistent decisions. Additionally, if the appellants are successful, the case will be resolved without resort to a lengthy and costly trial and appeal.

Kilgore, 490 So. 2d at 896. Similarly in this case, if Dillingham successfully argues that the contractual period of limitation applies, the parties will not have to "resort to a lengthy and costly trial and appeal." *Id*. Consequently, the lower court's decision with regard to the contractual limitations period is appropriate for interlocutory review.

[12] Second, the resolution of whether the arbitration clause applies will "clarify further proceedings" and "[c]larify issues of general importance in the administration of justice." 7 GCA § 3108(b)(1), (3); *see also Brown v. Eastman Kodak Co.*, 2000 Guam 30, ¶ 1 (granting interlocutory review to "clarify issues of general importance in the administration of justice" in reviewing "the lower court's set-aside of judgment pursuant to Rule 60(b)(6) of the Guam Rules of Civil

Procedure."). The policy behind arbitration is "to speed the resolution and determination of disputed issues." *Brooks v. Cigna Prop. & Cas. Cos.*, 700 N.E.2d 1052, 1054 (Ill. App. Ct. 1998). The resolution of "[w]hether a dispute is within the scope of an arbitration clause should be determined at the earliest possible moment and should be controlled by judicial guidelines." *J & K Cement Constr., Inc. v. Montalbano Builders, Inc.*, 456 N.E.2d 889, 894 (Ill. App. Ct. 1983) (citations and internal quotations omitted). Accordingly, we find that the denial of the motion to arbitrate is proper for interlocutory review.

[13] In essence, because resolution of the issues raised by the parties comport with the grounds set forth in 7 GCA § 3108(b), this case has been properly brought before us for interlocutory review.

B. Merits

[14] Because we accept interlocutory review of this case, we now address the following two substantive issues raised in this appeal: (1) whether the arbitration clause applies, and, (2) whether the contractual period of limitation applies.

1. Joint Resolution and Mandatory Arbitration Provisions

[15] Section 11 of the General Conditions, entitled "Dispute Resolution," provides that all claims and disputes that arise out of or relate to the Subcontract shall be arbitrated. In specific terms, provisions 11.1 and 11.2.1, state in pertinent part:

> 11.1 Unless waived by Contractor in writing, *all claims and disputes arising out of, or relating to*, this Agreement shall be referred to a joint resolution panel consisting of senior executives (having full settlement authority) from Contractor and from Subcontractor for informal resolution prior to initiating arbitration or litigation concerning same.
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> 11.2.1 Agreement to Arbitrate. Subject to the condition precedent set forth in Paragraph 11.1 above, *all claims, disputes and matters in question arising out of or relating to this Agreement or the breach thereof*, except for claims which have been waived by the passage of time or by acceptance of final payment, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court of competent jurisdiction;

Appellant's Excerpts of Record, p. 34 (General Conditions) (emphasis added). Dillingham asserts that Circle A's suit is barred pursuant to the above two provisions. Moreover, Dillingham contends that Circle A's claims arise out of or relate to the Subcontract since several provisions of the Subcontract must be interpreted in order to adjudicate the claims. We agree.

[16] "Arbitration is regarded as an effective, expeditious, and cost-efficient method of dispute resolution" and there is a strong policy consideration for the use and promotion of the process. *Salsitz v. Kreiss*, 761 N.E.2d 724, 731 (Ill. 2001); *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 268 n.2 (Tex. 1992) (noting that "[a]t least 36 states . . . have adopted all or part of the Uniform Arbitration Act to encourage and facilitate the use of arbitration."). Arbitration agreements are not void against public policy because a party who "sign[s] the arbitration agreements, [does] not give up [their substantive] right . . . only the ability to raise the issue in court." *Tjart v. Smith Barney, Inc.*, 28 P.3d 823, 831-32 (Wash. Ct. App. 2001). "An agreement to arbitrate is valid unless grounds exist at law or in equity for the revocation of any contract, such as fraud or unconscionability." *Emerald Tex., Inc. v. Peel*, 920 S.W.2d 398, 402 (Tex. Ct. App. 1996). Moreover, "[a]ny doubts about the scope of an arbitration clause should be resolved in favor of arbitration." *Gergel v. High View Homes, LLC*, 996 P.2d 233, 235 (Colo. Ct. App. 1999); *Emerald Tex.*, 920 S.W.2d at 403; *Carlin Pozzi Architects v. Bethel*, 767 A.2d 1272, 1276 (Conn. App. Ct. 2001); *Rodgers Builders, Inc. v. McQueen*, 331 S.E.2d 726, 731 (N.C. Ct. App. 1985) (citations omitted). However, an arbitration agreement is a matter of contract and "[t]he parties to an agreement are bound to arbitrate only those issues they have agreed to arbitrate, as shown by the clear language of the agreement and their intentions expressed in that language." *Salsitz*, 761 N.E.2d at 731; *see also Ozdeger v. Altay*, 384 N.E.2d 82, 84 (Ill. App. Ct. 1978).

[17] In the case at bar, the crucial issue before this court is whether Circle A's third claim for relief of negligence and fourth claim for relief of breach of contract arise out of or relate to the

Subcontract.[2] Courts in several jurisdictions, which have interpreted a similar clause to the present one, have construed the "arising out of" and "relating to" language broadly.[3] *See Gergel*, 996 P.2d at 236 (expressing that "[t]he inclusion of the phrase 'relating to' in the warranty indicates that the scope of the arbitration provision is broad and inclusive, rather than narrow and exclusive."); *Rodgers Builders*, 331 S.E.2d at 732 (finding that "arising out of, or relating to" language to be "sufficiently broad to include *any* claims which arise out of or are related to the contract or its breach, regardless of the characterization of the claims as tort or contract."); *Emerald Tex.*, 920 S.W.2d at 403 (finding that the "arising out of or relating" language to be "broad" and, therefore, that "arbitration should not be denied unless it can be said with positive assurance that the particular dispute is not covered."); *Carlin Pozzi*, 767 A.2d at 1276 (holding that the language "arising out of or relating to" is broad in scope and "precludes any exceptions so long as the claims, disputes or other matters in question between the parties arise out of or are related to the agreement or the breach thereof."). In light of the clause's broad interpretation, these courts have found that tort

[2] The trial court's rationale in denying Dillingham's summary judgment with respect to the arbitration issue and the contractual limitation period issue is that Circle A's *negligence* and *breach of contract* claims are "'not related to,' nor [sic] does it 'arise out of' the contract," and "the action is simply one for damages caused by the negligence of Dillingham. The alleged negligence is independent of any contract and arises whether or not said contract exists." Appellant's Excerpts of Record, p. 41 (Decision and Order, January 7, 2002). Based on the trial court's reasoning, at the outset, we dispose of the issue of whether Circle A's *breach of contract claim* "arises out of" or "relates to" the Subcontract. The trial court clearly erred in holding that Dillingham's breach of contract claim does not germinate from the Subcontract. *See Crisona v. Surgery Ctr. Anesthesiology Consultants, P.C.*, 743 So. 2d 452, 456 (Ala. 1999) (finding that the party's "breach-of-contract claims arise out of and relate to the employment agreements and, thus, fall within the scope of the arbitration provision."). Moreover, an arbitrator's or court's complete analysis of Circle A's argument that "the actions or inactions of . . . [Dillingham] are in breach of contract, express or implied, between [Dillingham and Circle A] . . .," would in itself entail a full examination of the Subcontract and the General Conditions signed by the two parties. Appellant's Excerpts of Record, pp. 7-8 (Complaint, October 27, 2000). We cannot easily conceive how a breach of contract claim does not arise out of the subject contract. Accordingly, the thrust of this appeal is whether Circle A's *negligence* claim (and not the breach of contract claim) "arises out of" the Subcontract, which would impute the applicability of both the one year contractual limitation period clause and the arbitration clause.

[3] The high level of scrutiny that courts have employed in interpreting the "arising out of" or "related to" language is reflected when contrasted with the courts' interpretations of the phrase "all disputes arising in connection with" language, which is "*read narrowly* to apply only to claims relating to matters specifically mentioned in the contract." *State Farm Mut. Auto. Ins. Co. v. George Hyman Constr. Co.*, 715 N.E.2d 749, 756 (Ill. App. Ct. 1999)(citations omitted)(emphasis added); *Westville v. Loitz Bros. Constr. Co.*, 519 N.E.2d 37, 39 (Ill. App. Ct. 1988) (noting that "in comparison to a clause providing for arbitration of disputes 'arising in connection with' a contract, a clause using the language 'arising out of, or relating to' is broader in scope.") (citation omitted).

claims, including negligence, fall under the purview of the clause, and are therefore, arbitrable. *Rodgers Builders*, 331 S.E.2d at 732; *Zahn v. Dist. Ct.*, 457 P.2d 387, 388 (Colo. 1969) (the reviewing court affirmed the trial court's stay of proceedings pending arbitration even on plaintiff's claims "based on alleged unskillful and negligent construction, . . . contrary to plans and specifications and in violation . . . of building codes."); *Emerald Tex.*, 920 S.W.2d at 404 (holding that the negligence claim was not completely independent of the contract and was thus subject to arbitration.).

[18] Circle A argues that the negligence claim does not "arise from" or "relate to" the Subcontract because it is a tort that extends beyond the contract. However, we find Circle A's argument unpersuasive for two reasons. The first reason is that "[t]he fact that a claim sounds in tort does not necessarily take it out of a clause requiring arbitration of a contract dispute." *Gergel*, 996 P.2d at 235. A close examination of Circle A's Complaint demonstrates that Circle A's negligence claim merely "frustrate[s] . . . [the] agreement to arbitrate, by simply framing the[] claim[] in tort." *Id*. at 235-36. Circle A's third claim for relief of *negligence* and fourth claim for relief of *breach of contract* are nearly identical. We note the following similarities between paragraphs 21-22 in support of the negligence cause of action and paragraphs 24-25 in support of the breach of contract cause of action found in Circle A's Complaint:

> 21. At the time of the tragedy, namely the double tee and header beam collapse, Defendant's negligent, willful, and/or intentional actions or inactions proximately caused damage to excavation equipment of Plaintiff Circle A Excavation Co., located immediately underneath the structure. The Machinery included a PC-220 excavator, a 555D backhoe, a soil impounder, and miscellaneous other equipment that was destroyed or damaged. The value of replacement or repair of the equipment is in excess of $175,500.00.
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> 22. As a proximate result of Defendant's willful and negligent inactions and actions, the Plaintiffs Circle A Excavation Co., Michael Langdon, and Michelle Langdon, have suffered loss of personal and equipment rental time, uncompensated wages paid to employees, interruption and impairment of business revenues, loss of business revenues, loss of business reputation, incurring of expenses or obligations associated with contractual, legal or statutory obligations to employees, and other damages in an amount in excess of $2,175,500.
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> . . . .

> 24. . . . . In that at the time of the tragedy, namely the double tee and header beam collapse, Defendant's actions or inactions proximate caused damage to excavation equipment of Plaintiff Circle A Excavation Co., located immediately underneath the structure. The Machinery included a PC-220 excavator, a 555D backhoe, a soil impounder, and miscellaneous other equipment that was destroyed or damaged. The value of replacement or repair of the equipment is in excess of $175,500.00.
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> 25. As a proximate result of Defendant's breach of contract, express or implied, the Plaintiffs Circle A Excavation Co., Michael Langdon, and Michelle Langdon, have suffered loss of personal and equipment rental time, uncompensated wages paid to employees, interruption and impairment of business revenues, loss of business reputation, incurring of expenses or obligations associated with contractual, legal or statutory obligations to employees, incidental and consequential damages, and other damages in an amount in excess of $2,175,500.

Appellant's Excerpts of Record, pp. 7-8 (Complaint, October 27, 2000).

[19] We find this case analogous to *J & K Cement Constr., Inc. v. Montalbano Builders, Inc.*, 456 N.E.2d 889 (Ill. App. Ct. 1983), where the court held that the negligence cause of action arose from the contract and was therefore arbitrable. In *J & K Cement Construction*, several causes of action were raised including a Count I breach of contract claim and a Count V negligence claim. *Id.* at 895-896. However, the court found that "the negligence term [was used] to describe a breach owed . . . by virtue of the parties' contract and not from a duty based in tort." *Id* at 896. The court grounded its finding on the fact that in support of its negligence count, the complaining party "alleged the identical defects in construction contained in Count I," the breach of contract count. *Id*. Similarly, we find that Circle A's negligence claim is grounded upon Dillingham's breach of the Subcontract because of the similarities that exist in the allegations that support both the negligence and breach of contract claims.

[20] The second reason why Circle A's negligence claim arises out of the Subcontract is because we agree with Dillingham's contention that in order to adjudicate Circle A's claims, several provisions of the Subcontract must be interpreted. *See* Appellant's Opening Brief, p. 12. For example, Section Two of the General Conditions outlines Circle A's responsibility in the performance of their work. Of special import is section 2.1.4, which provides:

> If part of Subcontractor's Work depends for proper execution or results upon construction or operations by Contractor or other trades, *Subcontractor shall prior to proceeding with that portion of the Work*, promptly report to Contractor all discrepancies or defects in such other construction or operations that render it unsuitable for proper execution or results. *Failure of Subcontractor to report such discrepancies or defects shall constitute an acknowledgment by Subcontractor that such construction or operations is fit and proper* to receive Subcontractor's Work, and *by proceeding with such portion of the Work, Subcontractor waives all claims for damages resulting from discrepancies or defects which Subcontractor has or should have discovered through reasonable diligence*.

Appellant's Excerpts of Record, p. 27 (General Conditions) (emphasis added). Here, Circle A contends that Dillingham's improper installation of the beam structure resulted in the collapse. Circle A further asserts that Dillingham's General Superintendent "knew or should have known there was a wholly improper installation in the area where he directed" Circle A employees to work even though "no spot welding, correct angle-iron, corbel installation, and bearing pads were in place to protect against collapse of the structure." Appellant's Excerpts of Record, pp. 4-5 (Complaint, October 27, 2000). However, under section 2.1.4, Dillingham could presumably argue that Circle A's choice to proceed with the ordered work given the substandard condition and defects that Circle A alleges meant that Circle A "waive[d] all claims for damages resulting from . . . [the] defects." Appellant's Excerpts of Record, p. 27 (General Conditions).

[21] Another pertinent part of the Subcontract is Section Six, entitled "Protection of Persons and Property." Pursuant to the provisions under Section Six, it appears that Circle A as the Subcontractor undertook the responsibility for the safety of its employees, as reflected in the following:

> Section 6.1. Safety Precautions and Programs. Subcontractor agrees that the prevention of accidents to its workers engaged in the Work, and to others in proximity thereto, is the responsibility of Subcontractor . . . .
>
> Section 6.2. Safety of Persons and Property. Subcontractor shall take all precautions and measures for the safety of its operations, and shall provide all precautions to prevent damage, loss or injury to: (A) all employees on the Work and all other persons who may be affected thereby; (B) all the Work and materials and equipment to be incorporated therein . . . .
>
> . . . .

> Section 6.4. Reporting of Dangerous Conditions and Accidents. Subcontractor shall promptly report any known dangerous or hazardous conditions existing on the Project site to Contractor, whether or not the Work is affected thereby . . . .

Appellant's Excerpts of Record, p. 31 (General Conditions). Although we do not interpret and determine the above provisions' effects on Dillingham's liability in the case, the provisions do illustrate how adjudication of Circle A's negligence claim would entail an interpretation of the Subcontract. Such interpretation is indicative of the significant relationship between the negligence claim and the Subcontract.

[22] In sum, we find that Circle A's negligence claim did "arise out of" and "relate to" the Subcontract. Accordingly, Circle A's claims fell within the arbitration clause. The trial court erred in denying Dillingham's summary judgment motion with respect to the arbitration clause.

2. Contractual Limitation of Action Provision

[23] Dillingham argues that Circle A's claims are barred by the contractual limitation of action provision set forth in its construction Subcontract with Dillingham. Because the parties do not dispute that the project was substantially completed on June 30, 1999, Dillingham asserts that Circle A's Complaint, brought on October 27, 2000, surpasses that one year contractual limitation period. We agree.

[24] Pursuant to section 11.2.4 of the General Conditions, "[n]o action shall be maintained against the Contractor upon any claim *arising out of or based upon* this Agreement unless commenced within one (1) year after Substantial Completion of the Project." Appellant's Excerpts of Record, p. 34 (General Conditions). Because both the contractual limitation period clause and the arbitration clause contain the same generic phrase, "arising out of," we incorporate our previous arbitration clause analysis above in the interpretation of the contractual limitation period clause. Accordingly, for the same reasons outlined above wherein we found Circle A's negligence claim arbitrable because Circle A's negligent claim "arises out of" the Subcontract, we similarly find that the Subcontract's "time limitation for claims" is also applicable to the negligence claim.

[25] Notwithstanding Circle A's challenge to the limitation period's applicability based on the distinction between a tort claim and a contract claim, Circle A fails to proffer any other arguments to dispute the underlying provision's enforceability. In view of such failure, we find no reason why the provision should not be enforced. A contractual limitations provision, such as the present, which "shorten[s] a statute of limitations can be validly contracted" as long as it "is not in itself unreasonable or is not so unreasonable as to show imposition or undue advantage." *Capehart v. Heady*, 23 Cal. Rptr. 851, 852-53, 206 Cal. App. 2d 386, 388, (Ct. App. 1962).[4] Similar to an arbitration clause, "[t]he contractual shortening of the Statute of Limitations does not, . . . limit a party's liability," *Diana Jewelers of Liverpool, Inc. v. A.D.T. Co.*, 562 N.Y.S.2d 305, 306 (N.Y. App. Div. 1990), nor does it "conflict with public policy." *Mars Assocs., Inc. v. New York City Educ. Constr. Fund*, 513 N.Y.S.2d 125, 128 (N.Y. App. Div. 1987) (citations and internal quotations omitted). Instead, the contractual limitation period "more effectively secures the end sought to be attained by the statute of limitations," *Mars Assocs.*, 513 N.Y.S.2d at 128 (citations and internal quotations omitted), which is "the prompt resolution of disputes while the evidence is still fresh and available." *Diana Jewelers*, 562 N.Y.S.2d at 306.

[26] In light of the contractual limitation period's applicability to the negligence claim and Circle A's failure to challenge the validity of the provision, we hold that the clause is enforceable. Consequently, our holding effectively bars Circle A's suit against Dillingham because the Complaint was filed one year after the Project was substantially completed.

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[4] The one year contractual limitation provision contained in the General Conditions is not unreasonable. *See Capehart v. Heady*, 23 Cal. Rptr. 851, 853, 206 Cal. App. 2d 386, 389 (Ct. App. 1962) (noting that "[t]hree months has been approved" as not unreasonable.); *Stenger Indus., Inc. v. Int'l Ins. Co.*, 74 B.R. 1017, 1019 n.1 (Ga. 1987) (finding that in the insurance context, a "one-year limitation is not against public policy provided the period fixed be not so unreasonable as to raise a presumption of imposition or undue advantage in some way.").

IV.

[27] We find that both the arbitration clause and the contractual limitation period clause are applicable to Circle A's negligence and breach of contract claims for relief because the claims "arise from," "relate to," or are "based on" the Subcontract. Accordingly, we **REVERSE** the trial court's denial of Dillingham's summary judgment motions on both issues. The cause is **REMANDED** for the trial court to enter judgment in favor of Dillingham consistent with this opinion.