

2 Examples of Why Your Contract Language Matters

Two recent cases demonstrate how the language of your construction contract can significantly impact your rights and the outcome of your case.

Contractor Wins Lawsuit Against Owner, But Court Denies Contractor's Application For Attorneys' Fees Despite Attorneys' Fees Provision in Contract

Even though a contractor prevailed in his lawsuit against the homeowners for which he performed work and the contract between the parties contained an attorneys' fees provision, he was denied recovery of his attorneys' fees. The court held that the attorneys' fees provision was limited because it provided that the contractor could recover the "costs of collection" "should the [homeowners] fail to make payment as required." The court found that the contractor was awarded damages not because the homeowners failed to make payments as required by the contract terms but because of the homeowners' breach of contract. The result would have been different if the attorneys' fees provision in the contract contained broader language such as, "the prevailing party shall be entitled to its attorneys' fees" or "should the homeowner breach the contract in any way, the contractor shall be entitled to collect his attorneys' fees". See Cohen v. Quinn, 2015 Mass. App. Unpub. LEXIS 139 (Feb. 27, 2015).

Court Finds That An OPM Is Not Liable For Injuries Sustained By A Subcontractor's Employee

A court recently looked to specific contract language in dismissing a personal injury suit against an owner's project manager (the "OPM"). The employee of a subcontractor injured on the job site brought suit against the general contractor, another subcontractor and the OPM. The Court dismissed the employee's claim against the OPM because the agreement between the owner and the OPM did not require the OPM to monitor the means and methods of the general contractor and subcontractors, nor were there any terms assigning the OPM safety-related obligations. Moreover, the general contract and subcontracts all contained terms obligating those parties to be responsible for job safety. The OPM's contract terms were critical in helping it avoid potential liability for the employee's injuries. To further protect itself, the OPM would be wise to add a specific exclusion for any safety-related obligations. See Rodrigues et al. v. Tribeca Builders Corp., 2015 Mass. Super. LEXIS 23 (March 5, 2015).

If you have any questions regarding the above information, please contact an attorney in our Construction Law Group.

If you have any questions about the issues addressed here, or any other matters involving Construction Law issues, please feel free to contact:

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