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SJC DECIDES COGHLIN CASE IN FAVOR OF CONSTRUCTION MANAGERS: OWNER IMPLIEDLY WARRANTS THE PLANS AND SPECS FOR CM AT RISK PROJECT

In a much anticipated decision, the Massachusetts Supreme Judicial Court last week confirmed that the "Spearin Doctrine" is alive and well in Massachusetts, holding that public owners impliedly warrant plans and specifications furnished in conjunction with a construction management at risk project performed pursuant to M.G.L. Chapter 149A. Coghlin Elec. Contractors, Inc. v. Gilbane Bldg. Co., et al., ___ Mass. ___, 2105 WL 5123135 (Sept. 2, 2015). Click here to read the decision. The Court also held that under the facts of this case, the parties did not disclaim this implied warranty. Lastly, the Court found that the indemnification agreement in the parties' contract did not prevent the construction manager from bringing a third-party complaint against the public project owner seeking indemnity for damages alleged by a subcontractor claiming additional costs arising out of alleged design defects.

The Background

In the Coghlin case, Gilbane Building Co. ("Gilbane") was sued by its subcontractor for, among other things, additional costs related to design issues on a construction management at risk ("CM at Risk") project being performed pursuant to Chapter 149A. As the construction manager, Gilbane brought a third-party complaint against the public project owner, the Division of Capital Asset Management and Maintenance ("DCAM") seeking indemnity for the subcontractor's claim. Gilbane alleged, in essence, that if the subcontractor recovered against Gilbane for damages resulting from problems with the design, then DCAM is responsible for those problems and must reimburse Gilbane for any damages paid to the subcontractor.

DCAM moved to dismiss Gilbane's third-party complaint against it, and the trial court granted the motion concluding that the owner's implied warranty of the design, also known as the "Spearin Doctrine," only applied to traditional design-bid-build construction projects. The trial court held that the same implied warranty did not apply when the CM at Risk delivery method is employed because the "roles and responsibilities" of the parties were substantially different from the design-bid-build method. The trial court also determined that the indemnity obligation in the contract between Gilbane

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and DCAM required Gilbane to indemnify DCAM for any damages Gilbane might be awarded from DCAM, thereby creating "an impermissible circuity of obligation." The trial court's decision was contrary to the general understanding of the implied warranty of plans and specifications and decades of case law, and Gilbane appealed moving for direct appellate review by the SJC. It is important to note that several construction industry groups also filed briefs in the appeal for amicus curiae or "friend of the court" in support of the Gilbane position.

The SJC Decision

The SJC held that although the roles of the parties in the CM at Risk method do differ from those in the design-bid-build method, the differences are not so great that the owner's implied warranty of the design should not apply altogether. The Court found that with the CM at Risk method, the owner still retained control of the design process through the contract terms and the use of a separate designer and, therefore, should retain responsibility for any defects.[1] Nevertheless, the Court also held that because the construction manager's role was different from the design-bid-build method, the scope of the implied warranty would be determined by the extent of the construction manager's design responsibility:

> The greater the [construction manager's] design responsibilities in the contract, the greater the construction manager's burden will be to show, when it seeks to establish the owner's liability under the implied warranty, that its reliance on the defective design was both reasonable and in good faith. … Therefore, the [construction manager] may recover damages caused by the breach of the implied warranty, but only if it satisfies its burden of proving that its reliance on the defective plans and specifications was reasonable and in good faith.

Therefore, the amount that Gilbane will be able to recover from DCAM for alleged design defects will be limited to "that which is caused by [Gilbane's] reasonable and good faith reliance on design defects that constitute a breach of the implied warranty."

The Court also held that the broad indemnity provision in the contract between Gilbane and DCAM did not require Gilbane to indemnify DCAM for DCAM's liability to Gilbane under the third-party complaint for design errors. The Court acknowledged that although the indemnity provision was "broad in scope, [it] does not cover claims, damages, losses, and expenses arising out of the Designer's work, as opposed to Gilbane's design-related duties." Damages resulting from the designer's errors, as opposed to Gilbane's failure to meet its contractual design-related obligations such as performance review, do not trigger an indemnity obligation. Further, the language of this indemnity provision specifically exempted Gilbane from any indemnity obligation to the designer or DCAM for damages related to design defects.

The Takeaway

The takeaway for the construction manager is to carefully negotiate the scope of contractual responsibilities pertaining to the project design, including indemnity provisions. The construction manager's scope of work related to design should be narrowly written so that control of the design remains firmly with the owner and it is clear that the construction manager is not serving as designer and assumes no liability for the design. With such language in place, the construction manager will have a better chance of demonstrating that it reasonably relied on the design and, therefore, has a claim for design defects under the implied warranty. Note, although this decision involved a public CM at Risk project pursuant to Chapter 149A, it is conceivable that the holdings in this case also could be applied to a private CM at Risk project.

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

[1] The Court also held that Gilbane and DCAM did not expressly waive the implied warranty in their contract.