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NEWSLETTER
RE: Construction Legal Standards
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Over many years, many construction doctrines have been utilized with the courts to interpret disputes between and amongst contractors, owners and subcontractors. In a nutshell, they are as follows:

1. The Spearin Doctrine. Under this theory, a contractor is only bound to build according to the plans and specifications and will not be responsible for the consequences of defects in the plans and specifications.

Plans and specifications are like a "roadmap" where the driver merely utilizes the directions of going to a certain point.

Courts have stated that there is an implied warranty in plans and specifications that if complied with, the project would be built in accordance with those documents.

2. The Economic Loss Doctrine. Generally speaking, an entity who has a contract with another entity may bring suit against one another if there is a breach of contract, etc. If there is no contract between a party and a third party, Economic Loss Doctrine states that a party cannot bring suit against a non-party unless there is an action for personal injury or property damage.

Therefore, the bottom line is that an entity can only bring an action for breach of contract, etc., against a party who that entity has a contract.

3. The Slavin Doctrine. Under this doctrine, once a project owner accepts the completed work, the contractor is not liable to third parties with whom it has no privity of contract for damages subsequently sustained by reason of the contractor's negligence.

If the owner takes the project in a defective condition, the owner accepts the defects and negligence that caused them as his own and thereafter. However, there are exceptions to this theory and some states have adopted the foreseeable doctrine where it is was reasonably foreseeable that a third person would be injured by the work due to the contractor's negligence. Thus, the Slavin Doctrine is only adhered to by a few states.

4. The Severin Doctrine or "Pass-Through." Under this doctrine, general contractors will pass through its subcontractor's claim to the owner. Many general contractors in pursuing a sub's claim, utilizes a liquidation

agreement which states that the subcontractor is only entitled to the monies received by the general contractor from the owner.

5. The Cardinal Change Doctrine. This doctrine holds that if an owner issues change orders (or a general contractor to a subcontractor) that substantially changed the scope of the project, then the original contract has been abandoned and the contractor or subcontractor may refuse to pursue the change order and actually charge his customer with a new contractual amount because of the major scope change.

A traditional construction change order may not necessarily be a Cardinal Change, since a Cardinal Change requires work materially different but not specified in the contract and a Cardinal Change in fact amounts to a breach of contract.

6. The Superior Knowledge Doctrine. Many courts have held that an awarding authority, i.e. private or government has a duty to disclose to the contractor available information which the owner has regarding the contractor's scope of work or its performance on the project.

7. The Impossibility of Performance Doctrine. This doctrine applies whereby the performance of a contract is impossible and a determination is made that no contractor could perform the work, therefore, the contractor may be excused from performance.

8. The Doctrine of Promissory Estoppel. Some courts have held that a subcontractor's bid to a general contractor, where the general contractor relies upon that bid, is enforceable against the subcontractor.

The above doctrines are general in application and each case stands on its own merits as to whether or not the doctrine applies.

State law must be reviewed and researched to determine the applicability of these doctrines and of course, legal advice is essential.

Regards and be safe.

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