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CONSTRUCTION CONTRACTS

ATTENTION TO DETAILS; AVOID LITIGATION



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UNDERSTANDING CONSTRUCTION CONTACTS IS CRITICAL TO YOUR SUCCESS AND BOTTOM LINE

Construction contracts are the blueprints to the relationship between the owner and the contracting parties. Contracts provide guidance on how the relationships will work, and the rights and responsibilities of the parties. Understanding what each contract says, and understanding how the contract impacts your company is critical to a project – and to your bottom line.

The Minnesota appellate courts regularly provide contractors with guidance on how to write their contracts, and how to enforce the contract terms. Sometimes the Courts provide contractors with a harsh reminders that all entities in the construction industry must pay attention to and follow all contractual requirements in their agreements. Contractors should be aware of – and heed – these reminders.

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For example, in **Contractors Edge, Inc. v. City of Mankato**, the Minnesota Court of Appeals heard a case involving a construction agreement for a road extension project. The agreement was between the City and Contractors Edge (“Contractor”). A payment dispute arose over the location where the Contractor was required to stock pile and store excavated materials. The agreement specified that a stock pile must be one-half mile away from the project. The Contractor soon realized that the driving distance from the project site to the designated stock pile location was more than a half mile, thereby increasing the Contractor’s hauling costs. The Contractor requested a Change Order to cover the increased hauling costs. The City rejected the request, arguing that the straight line distance between the project and the stock pile location was actually less than one-half mile. The agreement was ambiguous in that it did not specify whether the distance referred to “driving” or “straight line” distance.

The Contractor then submitted a written claim to the City to increase its contract sum. The parties’ agreement required the Contractor to submit written notice of any claim within a prescribed time period, and to provide “supporting data” for the claim. The agreement further stated that the “responsibility to substantiate a Claim shall rest with the party making the Claim.” The City rejected the Contractor’s claim, stating that the Contractor failed to provide the required detailed evidence to support the Claim.

The Contractor then filed a lawsuit to recover the increased hauling costs. The City moved for summary judgment, and the district court granted the motion finding that the Contractor’s “notice of claim” did not provide the “supporting data” as required by the parties’ agreement. The Minnesota Court of Appeals agreed with the district court’s decision, holding that the Contractor’s failure to provide the data with its written notice meant that it did not fulfill the agreement’s requirements to present a valid Claim. As such, the Contractor’s notice of claim was ineffective.

Again, this case is a harsh reminder that contractors must follow all requirements within their agreements to ensure that they get paid. The risk of having an otherwise valid claim rejected for a failure to comply should not be a risk that a contractor be willing to accept.

Instead, avoid risk by thoroughly reading, understanding, and comply with all contract terms.

Another recent example of reminders from the Minnesota Court of Appeals is found in **Storms, Inc. v. Mathy Construction Company**. In this case, the Court reminded contractors that they must follow the terms of the contract. More importantly, the Court warned – failure to comply with all terms will prevent you from getting paid.

In this case, Mathy Construction Company solicited bids from subcontractors in response to a MNDOT solicitation for bids for a road-repair project. Mathy secured the MNDOT contract. Storms and Mathy then entered into a subcontract.

The road-repair project was completed in August 2011, and in May 2012, in response to a request by Mathy seeking payment, MNDOT issued a change order reducing the amount owed to Mathy. The reason for issuing the Change Order was that the planned quantity amounts for the project exceeded the actual amounts necessary to complete the project. Storms sought payment from Mathy, which refused to pay because of the Change Order and subsequent reduction in payment from MNDOT. Storms brought suit against Mathy, arguing that it was entitled to payment of the full subcontract amount because the Change Order came outside the time period prescribed by MNDOT specification 1402 (allowing MNDOT to change the details of the project at any time during the progress of the work).

This opinion by the court of appeals reverses that district court opinion denying Storms damages for breach of the subcontract. The court of appeals determined that the language of the subcontract clearly indicated that “any changes made to the project must be made during the progress of the work because the [subcontract] language indicates that when the change is made, there is still work left to be completed.” The court concluded that MNDOT’s Change Order, issued nine months after completion of the project, was not valid under the subcontract agreement. Storms was therefore entitled to damages for breach of the subcontract.

Overall, this opinion warns contractors that: (1) the Court will uphold the terms of your contract agreements; and (2) in order to get paid, contractors should comply with all contract terms.

These harsh and continual judicial reminders should motivate every contractor to carefully read and review every contract before they sign it, and to modify the terms as needed to ensure they are acceptable. The reminders should also encourage contractors to seek help interpreting and renegotiating any contract provisions which they are unsure about, or which they feel are vague, burdensome or otherwise objectionable.

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