

What's New With Construction Contract Standards in Massachusetts



The lowdown on one state court case & how it could be interpreted elsewhere

by David McGlone
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Construction contracts are arguably more important than other contracts because they guarantee the health and safety of all potential occupants of a building. But, they have always been fundamentally different from standard commercial contracts.

So, when a construction case makes it to the call of the trial list, it is like the judge is being thrown a knuckleball after seeing a hundred fastballs. Construction contracts are a different creature than standard commercial contracts, sometimes with the intent that is counterintuitive to a judge.

You could even speculate that one of the reasons construction contracts often have an arbitration clause is because judges just do not understand how things should work under a construction contract. In the interest of enforcing the parties' original intent, it needs to be referred to an industry person for consistent judgment.

Recently, a Massachusetts Court eliminated one of the idiomatic features of its construction law jurisprudence. Formerly, in Massachusetts, a contractor could not recover on the contract itself without showing complete and strict performance of all its terms.

Recently, using this rule, a trial judge nullified a multimillion-dollar claim brought by a contractor laying fiber optic cable when it falsely certified that its subcontractors had been paid. This would seem a serious breach. However, no subcontractor ever brought a claim. Moreover,

the misguided agenda of the contractor in falsifying certification resulted in no damages to the owner.

The trial judge also ruled there could be no quantum meruit (the value of services rendered) recovery for the contractor, foreclosing any compensation.

Therefore, the resulting dismissal of the claim resulted in a multimillion-dollar windfall to the owner. In *GFS Technology LLC. v. Massachusetts Technology Park Corporation*, the Supreme Judicial Court in Massachusetts (SJC) decided that this old rule of construction law had to be superseded to prevent injustice.

With no apologies to the past or construction lawyers, the SJC ruled that an off-contract quantum meruit recovery could still be had by the contractor as long as the breach was not one concerning “actual design and construction of the project.”

It is notable that only a quantum meruit claim was revived by SJC. If the Massachusetts ruling was applied to other states, it would mean different things. In some jurisdictions, quantum meruit is a recovery of the value of services rendered by the contractor (what it cost the contractor). In others, it is merely the value added to the property (what the property is valued at now minus what it was valued at before the contractor entered). These can be wildly different numbers, and both can be the same or wildly different numbers than the profit gained by a full contractual recovery.

Notwithstanding, the deterrent to contractual misbehavior still exists in Massachusetts, if a bit muted.