

Ruling Reinforces Need to Abide by Contracts in Construction Disputes

Commentary by Lindsey Thurswell Lehr, Daily Business Review

January 24, 2017

Lindsey Thurswell Lehr of Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel



Disputes arising from construction projects are fairly common, and as a result construction contracts and Florida law feature many provisions that establish the protocols for resolving any disputes that may develop.

Strictly adhering to the *modus operandi* for addressing and resolving disputes that is codified in construction contracts is essential to prevailing in any resulting litigation.

The Florida Third District Court of Appeal recently reinforced the obligation of construction defect litigants to adhere to the terms of their contract, finding that property owners which forgo the contractual mechanisms for resolving disputes will not succeed in Florida's courts.

The ruling by the Third DCA in the case of *Magnum Construction Management v. City of Miami Beach* relieved the contractor of liability for alleged safety concerns with a playground that it installed at the city's South Pointe Park. The appellate panel ruled that the city did not give the contractor the opportunity to fix the purported issues with the playground as required under its contract. Instead, the court stated that the city replaced the playground in its entirety without considering that the safety concerns could have been corrected by the contractor.

The court's decision in this case reinforces the importance of abiding by all contract terms and requirements in construction disputes. Construction contracts often allow the contractor which performed the work to have the opportunity to fix and cure any purported problems and defects. If a property owner ignores this contractual stipulation, as the city of Miami Beach appears to have done in this case, Florida's courts are very likely to rule against them.

Speculative Damages

The Third DCA also reversed the lower court's landscaping defects award to the city for approximately \$1.3 million. The trial court had concluded that the difference between its \$1.3 million award and the \$3 million sought by the city constituted a betterment for aspects "which improved upon and differed significantly from the original designs and specifications in the contract documents."

However, the Third DCA found that the city had not cited any evidence as to the value of the betterments in its remediation plan or what it would have cost to restore to the condition set

under the contract. It ruled that the city's damages were speculative because it only provided the costs associated with the planning, permitting and construction of a park that is fundamentally different from the one it contracted for with Magnum Construction, i.e. a betterment.

The panel concluded that "the trial court speculated as to the value of the betterments in the city's remediation plan and thus speculated in its ultimate calculation of the damages owed to the city in connection with the landscaping defects in the park." In addition to reversing the lower court's final judgment against Magnum for the alleged playground defects, it also reversed the court's award of damages as to the landscaping defects and remanded the case for a new trial solely on the landscaping damages.

The takeaway from this aspect of the ruling for property owners is that they must provide clear evidence to support their damages calculations, which cannot be speculative or based on the costs for improvements that will be considered betterments.

The contracts used in the construction field have been carefully honed by attorneys who focus on construction matters for generations, and they typically include detailed provisions to establish the procedures for pursuing any defect claims that may develop. As this case illustrates, strict and careful adherence to all of these contractual stipulations is critical to the success of any resulting litigation.

Lindsey Thurswell Lehr is an attorney in the Coral Gables office of Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel. She focuses on construction, real estate and community association law. Contact her at llehr@srhl-law.com.

<http://www.dailybusinessreview.com/id=1202777515729?keywords=Siegfried>

Reprinted with permission from the January 24, 2017 edition of the "Daily Business Review" © ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382, reprints@alm.com or visit www.almreprints.com.