

CCL Summaries

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CLAIMS

CORPORATE LIABILITY

Advanced Constr. Corp. v. Pilecki, 2006 Me. LEXIS 73 (July 13, 2006).

Key Point:

The president of a corporation can be held personally liable for an abuse of process claim for engaging in a deceptive trade practice.

CCL Summary:

Michael and Christine Pilecki (homeowners) entered into a contract with Advanced Construction Corporation (corporation) for the construction of a house. Aaron Spence (president) signed the contract as the corporation’s president and sole shareholder. The homeowners obtained a home construction loan. The corporation was required to complete documents for the lender. In the builder validation statement, the president made the false statement that he had never filed for bankruptcy. In order for funds to be disbursed to the corporation, the homeowners and the corporation were required to sign draw requests. The homeowners stopped signing draw requests because they were not satisfied with the corporation’s work. The corporation stopped work on the house and filed a mechanic’s lien on the property. A supplier sued the president and the homeowners to enforce a lien. The homeowners and the corporation and its president filed cross-claims. Among other claims, the homeowners brought claims for violations of the Home Construction Contracts Act, the Unfair Trade Practices Act, and the Uniform Deceptive Trade Practices Act (collectively, statutes) against the corporation and its president. The homeowners also brought a claim for abuse of process against the president. The jury found the president individually liable on the abuse of process claim and jointly and severally liable with the corporation on the statutory claims. The corporation and president appealed.

The president asserted that he could not be held individually liable for the homeowners’ claims. He further asserted that there was insufficient evidence for the jury to find him liable for abuse of process. The president, as the sole shareholder, could be

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held personally liable for his individual acts while a corporate agent. The president could also be held personally liable for his participation in wrongful acts while a corporate officer, as well as jointly and severally liable with the corporation for the statutory violations. The president initiated the filing of the lien that gave rise to the abuse of process claim. There was evidence that the president's representations and conduct before, during, and after construction constituted violations of the statutes and that the president used the lien process in an improper manner. The president filed a lien claim containing material misstatements regarding the amount he was owed. The president included costs for which he had already received payment from the lender. There was evidence that the president intended to withhold the homeowners' access to their home until he received payment and that he used the lien process to secure payment to which he was not entitled. The president was personally liable for the homeowners' claims. Affirmed; remanded for determination of attorney fees.

CONTRACTS

DISCRIMINATION

Harris v. Hays, 452 F.3d 714, 2006 U.S. App. LEXIS 16758 (8th Cir. Ark. July 5, 2006).

Key Point:

In order to challenge a contract award based on racial discrimination, a contractor must make a prima facie case that the awarding entity had an intent to discriminate.

CCL Summary:

The City of North Little Rock, its mayor, and city council (City) implemented a program to bring city sidewalks into compliance with the Americans with Disabilities Act. In the Phase I bid package, the City stated that it reserved the right to add or subtract sidewalks from the contract as funds allowed. In 2000, Larry Harris (contractor one), an African-American, was awarded the Phase I contract. The City subsequently removed some sidewalks from the package, which reduced the amount of the contract award. Some of the sidewalks removed from Phase I were included in the Phase II contract awarded in 2001 to Tom Brooks (contractor two), a Caucasian, who was the low bidder. The City again removed some sidewalks from the Phase II contract and reduced the contract amount. Without taking bids, the City subsequently extended contractor two's contract through 2003, based on an agreement to keep his price-per-square-foot constant at the 2001 level. In 2004, the sidewalk project was opened again to competitive bidding and awarded to an African-American contractor who was the lowest bidder. Contractor one brought a claim against the City for racial discrimination in awarding and extending the Phase II contract. The district court granted the City's motion for summary judgment, holding that contractor one failed to create a reasonable inference that the contract decision was based on racial discrimination. Contractor one appealed.

Contractor one argued that he was treated differently from contractor two in several respects. He first noted that the value of his Phase I contract was reduced when some of the work was shifted to the Phase II contract awarded to contractor two. He also cited the City's decision to extend additional work to contractor two under the

Phase II contract as evidence of the City's discriminatory intent. Contractor one further argued that the City inspected contractor two's work less rigorously than it inspected contractor one's work under Phase I. The Phase I bid solicitation expressly reserved the right to add or remove work based on available funding, and contractor two's Phase II contract was similarly reduced. Thus, the contractors were not treated differently in that regard. Relative to contractor two's contract extension, contractors one and two were not similarly situated because contractor two offered to keep unit price constant at the 2001 level for three years' while contractor one did not make a similar offer in his request for additional work. While the City Engineer was very informal when dealing with contractor two because of their social relationship, this did not create an inference of racial discrimination in the awarding of the contract. Because contractor one did not present sufficient evidence to create an inference of an intent to discriminate on the basis of race on the part of the City, it did not establish a prima facie case of racial discrimination. Affirmed.

BIDDING

RESTRICTIONS

Matter of: King Constr. Co., 2006 U.S. Comp. Gen. LEXIS 114 (July 17, 2006).

Key Point:

An agency's decision to evaluate more favorably offerors with experience constructing a specific type of office space is reasonable.

CCL Summary:

The General Services Administration (agency) issued a solicitation for offers for lease of build-to-suit office space for the Federal Bureau of Investigation. The solicitation, which was for the first phase of the project, called for submission of proposals limited to addressing the offeror's technical approach and qualifications. The agency would evaluate those proposals and then invite three to five offerors to submit proposals under the second phase, addressing specific design and price issues. The solicitation listed the following evaluation factors: development team experience, management plan, past performance of the development team, and design approach narrative. The solicitation provided that offerors with experience with projects of similar size, nature, and complexity would be evaluated more favorably. King Construction Company (protestor) protested the terms of the solicitation as overly restrictive.

The protestor argued that the solicitation was overly restrictive because it required experience constructing a specific type of office space, to the exclusion of other relevant experience. The protestor also argued that the solicitation unreasonably required experience with Leadership in Energy and Environmental (LEED) projects and contained redundant qualifications for team members. The agency asserted that office space construction experience would help ensure that an awardee's performance met the agency's needs. The agency had the discretion to select evaluation factors. The agency's decision to evaluate favorably offerors with experience that more closely corresponded to the solicitation's requirements was reasonable. It was reasonable for the solicitation to provide that offerors with LEED experience would be more favorably evaluated since the project had to meet certain mandated standards. The agency also made a reasonable determination that the project's likelihood of success was enhanced

if the individual members had experience with projects similar to the agency's project. The Federal Acquisition Regulation design-build procedures contemplated that solicitations for the first phase would call for specialized expertise by the individuals composing the offeror's team. The protest was denied.

EXPERTS

QUALIFICATIONS

Carlisle Corp. v. Medical City Dallas, Ltd., 2006 Tex. App. LEXIS 5476 (June 27, 2006).

Key Point:

An expert who has experience inspecting commercial buildings and estimating damages is qualified to testify about the cost of installing a foam roof.

CCL Summary:

Carlisle (manufacturer) manufactured a rubber roofing material. Medical City (owner) hired an installer to install the material over the existing roof of one of its buildings. One of the manufacturer's warranties warranted against premature deterioration for twenty years from the date of sale. The roof leaked for years. The owner eventually filed suit against the manufacturer. James West (expert), the owner's expert, testified about the cost of replacing the roof. The manufacturer objected that the expert was not qualified and that his testimony was unreliable. The court overruled the objection. A jury awarded the owner damages. The manufacturer appealed.

The manufacturer argued that the trial court erred by refusing to strike the testimony of the owner's expert. The manufacturer contended that the expert's methodology was based on guesswork because his source for estimates did not contain information specific to removal of the rubber roofing material. The manufacturer also contended that the expert was not qualified to testify about the replacement cost because he had never prepared specifications for a new roof or monitored the installation of a foam roof. The manufacturer's arguments related to performing roof installation, however, not to the expert's qualifications to testify about the cost of installation. The expert had been a licensed commercial property adjuster for at least fourteen years, with experience inspecting buildings and estimating damages to commercial buildings. In his career, he had inspected and written over 200 repair or replacement estimates for commercial roofs. The expert was qualified to testify about the cost of the installation of the foam roof. The expert's cost estimate was based on the RS Means Facilities Construction Cost Data guide (manual) and on his own experience. The expert testified that the manual was used widely in the industry to make estimates. The expert's estimate was based on the objective measure found in the manual and was not unreliable. The expert's testimony regarding the cost of the roof replacement was admissible. The trial court did not abuse its discretion in admitting the expert's testimony. Affirmed except as to attorney's fees.

Griffin Bros., Inc. v. Town of Alto, 2006 Ga. App. LEXIS 784 (June 27, 2006).

Key Point:

In Georgia, a town may award a contract to the higher bidder even though the lower bidder already purchased materials at the mayor's request.

CCL Summary:

The Town of Alto planned to install a water pipeline. The town contacted Griffin Brothers (contractor) to get an estimate on the cost. After the contractor provided the written estimate, the town's mayor asked the contractor to order the pipe necessary for the job. After the contractor ordered the pipe, the mayor informed the contractor that it needed to submit a formal bid. The contractor and another construction company (competitor) submitted bids. The competitor's bid price included a longer run of pipe. The town council awarded the project to the competitor, even though its bid was higher than the contractor's bid. The contractor filed a suit for damages and injunctive relief against the town, the mayor, and the town council members (collectively, town). The trial court granted the town's motion for summary judgment. The contractor appealed.

The town argued that the mayor did not have unilateral authority to bind the town to a contract. The contractor argued that the town was required to accept the contractor's bid since it was the lower of the two bids submitted to the town. The contractor also argued that the town was estopped from denying that a contract existed between the contractor and the town. OCGA Section 36-91-21 (statute) provided that competitive bidding requirements did not apply to projects that could be performed for less than \$100,000. The bids were under \$90,000, so the statute's requirements did not apply. Although the competitor's bid was higher than the contractor's bid, the competitor's bid included a more extensive scope of work, including installing more pipes, which better met the town's needs. The town had the discretion to award the contract to the contractor's competitor. The contractor relied on the mayor's request to order materials worth over \$15,000, but the mayor's authority to obligate the town without the consent of the town council was limited to \$2,000. The contractor had a duty to determine the mayor's authority to bind the town to purchase the material. Because the mayor lacked authority to bind unilaterally the town to a contract with the contractor, any contract asserted by the contractor was unauthorized. Although the contractor had performed work based on informal instructions from a single town official in the past, the town's prior course of conduct in dealing with the contractor did not confer new authority on the mayor. The contractor was foreclosed from asserting estoppel against the town. Affirmed.

Barnard Constr. Co. v. City of Lubbock, 2006 U.S. App. LEXIS 18102 (5th Cir. Tex. July 19, 2006).

Key Point:

A contractor is not paid for unexpected rock excavation where the construction contract contains a line item specifically limiting payment for rock excavation to one pipeline out of

fifteen.

CCL Summary:

Barnard Construction Co. (contractor), as the low bidder, was awarded a pipeline construction contract by the City of Lubbock, Texas (City). The City's engineer developed the bid form, which included a line item for rock excavation on Line A1, one of the fifteen pipelines included in the project. The engineer's data suggested that rock excavation was needed only for the one pipeline. Prior to the bidding process, the City expressly stated that the engineer's data was for information purposes only and that the bidders could drill their own test holes. The City also offered a question and answer session prior to bidding and made changes to the contract as a result of the session. The contractor did not drill its own test holes. During construction, the contractor discovered that lines other than Line A1 required rock excavation. The City initially paid for all rock excavated but later offset payment for rock excavated outside Line A1. The contractor sued for breach of contract. The district court granted summary judgment in favor of the City. The contractor appealed.

The contractor argued that the City's decision to pay for all rock excavated was a final, conclusive decision pursuant to the contract. In addition, the contractor argued that the contract was unambiguous in its terms requiring payment of all rock excavated, or alternatively, that it was ambiguous thereby warranting reversal of summary judgment. In response, the City maintained it had communicated to the contractor before or at the time of payment that it might later offset payment for rock excavated outside of Line A1. The contractor bore the risk of undertaking the project under the terms of the contract. The City provided an opportunity for the contractor to drill its own test holes or to ask questions about the contract prior to submitting its bid. The fact that the only place where a line item appeared for rock excavation was for Line A1 suggested that the agreement between the parties was to pay for rock excavation only on Line A1. This specific provision was controlling over any general terms on the same subject that could be interpreted differently. Thus, the contract was not ambiguous in its terms that rock excavation would be paid only for that performed on Line A1. Affirmed.

BIDDING

ANTI COMPETITIVE

RTLCA G Prods. v. Treatment Equip. Co., 2006 Tex. App. LEXIS 5461 (June 27, 2006).

Key Point:

Suppliers are not subject to Texas antitrust law where their combined bid adversely affects competition on a single project but does not affect free enterprise in the broader market.

CCL Summary:

The City of Dallas sought bids on a water treatment plant project. The bid package adopted the North Texas Council of Government specifications for fabricated steel and stainless steel pipe and specified Leopold filters and K-Flow and M&H butterfly valves. In the North Texas area, Treatment Equipment (supplier one) was the representative of Leopold filters and Municipal Valley (supplier two) was the

representative of K-Flow and M&H valves. Suppliers one and two and Piping Systems, Inc. (supplier three) submitted a package bid to a general contractor relative to the City's project. The package bid coupled supplier one and two's products with supplier three's fabricated steel and stainless steel pipe. RTLC Piping Products (RTLC) also submitted a bid to the general contractor for the fabricated steel and stainless steel pipe. The City accepted the general contractor's bid which included the package bid of suppliers one, two and three. RTLC sued suppliers one and two for violations of the Texas Free Enterprise and Antitrust Act (Act). The trial court granted motions for no-evidence summary judgment submitted by suppliers one and two. RTLC appealed.

RTLC argued that it had raised more than a scintilla of evidence to prove that by tying supplier three's steel pipe to supplier one's sole source filters and supplier two's butterfly valves, suppliers one and two had created an arrangement which had an anti-competitive effect on other pipe suppliers in violation of the Act. Suppliers one and two responded that RTLC failed to show an antitrust injury. In order to defeat a no-evidence motion for summary judgment, RTLC had to bring forward facts supporting all five elements of an illegal tying arrangement. One of those elements was that the suppliers' activity in the tied product involved a substantial amount of the market commerce. RTLC's summary judgment evidence showed a tying arrangement only with respect to the City's project and an impact on competition only with respect to the City of Dallas, a single buyer. Evidence that only the City of Dallas, a single buyer, was forced to purchase supplier three's fabricated steel and stainless steel pipe was not sufficient to warrant the concern of antitrust law. Affirmed.

CLAIMS

WARRANTY

Carlisle Corp. v. Medical City Dallas, Ltd., 2006 Tex. App. LEXIS 5476 (June 27, 2006).

Key Point:

An owner's cause of action for a defective roof accrues when a reasonable buyer should have discovered the premature deterioration, not upon initial delivery or when the deterioration began.

CCL Summary:

Medical City (owner) hired an installer to install a rubber roofing material over the existing roof of one of its buildings. The material was manufactured by Carlisle (manufacturer). The manufacturer issued two warranties to the owner. One of the warranties warranted against premature deterioration for a period of twenty years from the date of sale. A few months after the project was completed, a seam of the roof leaked. An employee of the owner reported the leak to the manufacturer. During subsequent years, the roof continued to leak despite the installer's attempted repairs. Nearly ten years after the project's completion, a consultant informed the owner that weathering had caused premature deterioration to the point of failure. The owner filed suit against the manufacturer. A jury awarded the owner damages and attorney's fees. The manufacturer appealed.

The manufacturer argued that the trial court erred in denying its motion for instructed verdict, which asserted that the owner's claims were barred by the statute of limitations. The manufacturer asserted that the widespread leaks should have alerted the owner to premature deterioration before the consultant examined the roof. The owner's cause of action accrued when a reasonable buyer should have discovered the premature deterioration up until the end of the twenty-year warranty period, not upon initial delivery or when the deterioration began. There was no evidence that the owner should have discovered the defect prior to being informed by the consultant. The owner filed suit within the twenty-year warranty period. The leaks could have indicated a problem with workmanship, which was not expressly warranted by the manufacturer. The cause of action accrued and limitations began to run when the consultant's inspection revealed premature deterioration to the point of failure because of weathering. The statute of limitations did not bar the owner's suit. Furthermore, the owner's action was not barred by its failure to notify the manufacturer because there was evidence that the owner's maintenance department notified the manufacturer when the roof initially leaked and was directed to speak with the installer. The manufacturer's failure to comply with the warranty was not excused because it had notice of the premature deterioration. Affirmed except as to attorney's fees, which were not recoverable for a breach of warranty claim.

SURETY

CONTRACT TERMS

Am. Safety Cas. Ins. Co. v. City of Olympia, 2006 Wash. App. LEXIS 1321 (June 27, 2006).

Key Point:

A city's extension of a deadline for production and its continued requests for information from a contractor's surety create a material issue of fact as to whether the city has waived the contract's time limits.

CCL Summary:

Katspan (contractor) entered into a contract with the City of Olympia to construct a segment of a sewer line. The contract contained a 180-day lawsuit limitation period. American Safety (surety) issued a payment and performance bond for the contractor. The contractor entered into a general agreement of indemnity with the surety in which the contractor assigned its rights to receive payment from the city to the surety. The contractor did not meet the contract schedule. Before the contractor completed the project, it became insolvent and assigned its rights under the contract to the surety. The surety sought an equitable adjustment from the city for the contractor's delays, which caused extra costs to the contractor. The city denied the claim. The surety sued the city. The city moved for summary judgment, claiming that the contract's lawsuit limitation period precluded the surety from bringing its claim. The trial court granted the motion. The surety appealed.

The surety argued that the city waived the contract's lawsuit and protest time limits and that the city prevented the surety from complying with the contract's claim information requirements. The surety asserted that the city's correspondence indicated that the city was willing to consider the claim past the 180-day lawsuit limitation period.

The city maintained that it did not intend to waive the contract terms. The city referred to strict compliance with the contract terms in only three letters. Two of the letters were sent before final completion. In the third letter, which the city sent after the limitations period, it stated that it was willing to negotiate the claims. For over a year later the city continued to ask the surety to provide more information. The city did not inform the surety that it intended to abide by the contract's time limit provisions and did not halt communications with the surety. The city's continued requests for information, its reference to litigation in the future, and its new deadline for production beyond the contract limitations period raised a material question of fact about whether the city waived the contract terms. The city's actions did not prevent the contractor and surety from complying with the notice and protest procedure, however, as the contractor failed to provide the requested information and documents to the surety. Summary judgment was improper. Reversed and remanded.

CONSTRUCTION

WORK INSPECTION

A-G-E Corp. v. State, 2006 SD 66, 2006 S.D. LEXIS 125 (July 19, 2006).

Key Point:

A contractor's reliance on an owner's inspections to determine conformity with contract requirements does not waive the owner's right to enforce the terms of the contract.

CCL Summary:

The South Dakota State Department of Transportation (DOT) awarded a contract to the A-G-E Corporation (contractor) for highway construction work. After each layer of the road bed was completed, DOT inspectors checked the grade elevation and slope at randomly selected grade stakes (blue-tops). After each layer was inspected, the inspector gave the contractor a verbal "okay" to proceed with the next layer. The contractor maintained its own checkers and inspectors on site during the project. Shortly after the final asphalt layer was started, the state engineer determined that the elevation and slope of the roadway was off between the randomly inspected locations and required the contractor to tear off the layers and re-grade them to contract specifications. The contractor sued DOT claiming waiver or estoppel prevented DOT from requiring the additional work and that the contractor should have received additional compensation for the extra work or alterations under the terms of the contract. The circuit court granted DOT's motion for summary judgment. The contractor appealed.

The contractor argued that DOT waived its contractual right to reject work identified by the engineer as nonconforming when the project inspector made his inspections at randomly selected blue-tops and gave verbal permission to proceed to the next layer. The contractor also argued that the regrading work it had already performed was "extra work" or "alterations" within the meaning of the contract. Whatever purpose DOT had for utilizing inspectors was independent of the contractor's duties under the contract. The contract permitted the DOT inspector to inspect and reject work in progress. It did not authorize the DOT inspector to supervise, approve or accept work on behalf of DOT and specifically stated that the inspector was not

authorized to alter or waive the provisions of the contract. Only the DOT engineer could effect final acceptance and relieve the contractor of further duties under the contract. The fact that the contractor elected to rely on the DOT inspector's random blue-top inspections as a means of determining whether it was in conformity with the contract requirements did not waive DOT's right to enforce the terms of the contract. The rework did not alter the project as originally planned. It merely served to correct the contractor's errors, which were due to an inability or failure to monitor its own work. Thus, the rework did not constitute extra work or alterations under the contract. Affirmed.

EXPERTS

OPINIONS

Leonard Plating Co. v. Metro. Gov't of Nashville & Davidson County, 2006 Tenn. App. LEXIS 471 (July 11, 2006).

Key Point:

Members of an agency do not base a decision solely on their own expertise where there is also substantial evidence and expert testimony to support the agency's finding.

CCL Summary:

Leonard Plating Company (company) operated an electroplating plant. The electroplating process produced wastewater containing acids and metals. The Nashville (city) government had to replace significant portions of the sewer line serving the company. Portions of the pipe had disintegrated. The city assessed the company a fine for violating its wastewater discharge permit as well as the cost of replacing the damaged sewer line. The company appealed. The city's Wastewater Hearing Authority (agency) conducted a full hearing. The agency's chairperson was an emeritus professor of civil engineering. The chairperson opined that the sewer corrosion was caused by acids in the wastewater discharge. The city's expert, who was employed by the city's Water Services, testified that the damage to the sewer lines was caused by acid. The company's consultant testified that a barbecue restaurant, the former occupant of the building, had deposited food in the pipes that could have caused the damage. The agency affirmed the city's assessment. The company filed a petition for common-law writ of certiorari. The trial court overturned the agency's decision, concluding that the members of the agency had relied on their own expertise in the absence of evidence that the company's wastewater caused the damage. The city government appealed.

The record contained sufficient evidence to support the agency's conclusion that the wastewater discharge from the electroplating plant caused the damage to the sewer lines. Despite speculation by the company's consultant that tomato acid could have damaged the sewer lines in the past, the city government presented evidence establishing that the electroplating plant's wastewater comprised virtually all of the flow in the most severely damaged sewer pipes. The city's expert concluded that damage was caused by acid and that the decay was similar to damage found in sewer lines serving other electroplating businesses. The evidence also established that samples of the wastewater exceeded permissible levels of acidity. The company had a history of failing to monitor the acidity of its wastewater. The evidence provided strong support for

the conclusion of the agency's members that the damage to the sewer pipes was caused by the excess acidity of the plant's wastewater. The trial court erred by deciding that the agency's members based their decision solely on their own expertise rather than on the evidence. Reversed and remanded.

CONTRACTS

BREACH

Millgard Corp. v. E.E. Cruz/NAB/Frontier-Kemper, 2006 U.S. Dist. LEXIS 41428 (S.D.N.Y. June 21, 2006).

Key Point:

A subcontractor is precluded from asserting claims for consequential damages for its loss of bonding capacity arising from a contractor's breach of contract.

CCL Summary:

Millgard Corporation (subcontractor) subcontracted with a general contractor to work on the construction of a storm overflow retention facility. After the subcontractor began work on the project, the contractor terminated the subcontractor for cause. The subcontractor later undertook a second project for which it allegedly received only forty percent of the profits, due to its inability to obtain bonding in light of the termination for cause. The subcontractor filed suit against the contractor. The court found that the termination for cause constituted a breach of contract, but determined that the design and the soil conditions would have rendered the subcontract impossible to perform at some point after the subcontractor was terminated. The court also found that the contractor was liable for payment to the subcontractor for work performed under the subcontract and for profits lost between the time the contractor terminated the subcontractor and the time when the project would have been terminated due to impossibility of performance. The contractor filed a motion for summary judgment on the issue of consequential damages.

The contractor argued that the subcontractor should be precluded from claiming consequential damages on the second project or any other project arising from its alleged difficulty in obtaining bonding. The subcontractor contended that it was entitled to consequential damages until the time at which it entered bankruptcy. The subcontractor presented documents in support of damages allegedly incurred more than five years after the termination. According to the subcontractor, the general knowledge that a termination for cause could negatively affect bonding capacity was sufficient to support recovery for jobs not specifically contemplated. However, damages could not be merely speculative or possible. Damages beyond the initial projects were not within the parties' contemplation. There was no evidence that the alleged effects of the loss of bonding capacity following the second project were contemplated by the parties when they entered the subcontract. The subcontractor could not recover damages for jobs it knew it could not obtain and jobs for which it did not bid. The subcontractor was precluded from asserting claims for consequential damages for the time period extending after the second project until it entered bankruptcy. The subcontractor was allowed to put forth evidence regarding damages in the form of costs and lost profits on the relevant projects. In addition, the contractor was not permitted to convert the termination for cause to one for convenience. Motion for summary judgment granted.

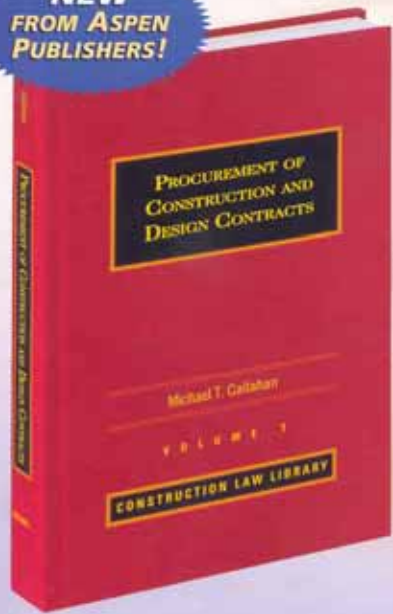
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