

Construction Contract Claim

Breach of Contract

The Problem

This project involved a complete \$6 million dollar renovation of a large apartment complex, including complete interior and exterior renovation, a reduction in units, and construction of a new community building. A General Contractor (GC) was hired by the developer, and that general contractor hired a "Subcontractor" who was also a general contractor. The subcontractor was to perform 100% of the scope of work in the plans and specifications, with the GC functionally taking the role of a Construction Manager. The subcontract included a detailed Progress Schedule with a substantial completion date set for 6 months later.

The Subcontractor was unable to maintain conformance with the Progress Schedule, failed to pay its sub-subcontractors and suppliers, failed to adequately perform the scope of work required in the subcontract, and ultimately abandoned the project a month before the required completion date. The GC had paid the Subcontractor for nearly 90% of the contract price although only 80% of the work was complete. Upon abandonment, the GC terminated the subcontract for cause. The GC took over the project, completing the work with added expense totaling \$1.4 million. The GC made a claim for damages caused by the delay and breach of contract.

The Solution

Pete Fowler Construction was hired by the GC to collect, organize, and analyze a tremendous volume of project information and render opinions related to the performance of the Subcontractor. We concluded the Subcontractor was responsible for delay damages and the additional costs to complete the project.

In our detailed report, we laid out the claim as follows:

Non-Performance by Subcontractor

1. Subcontractor failed to perform the scope of work described in the contract documents.
2. Subcontractor did not make timely payments to sub-subcontractors and suppliers which caused recorded liens to be filed against the project.
3. Subcontractor delivered completed buildings late or not at all, failing to conform to the contract completion date.
4. Subcontractor gave notice of their abandonment of the project.
5. Subcontractor violated the contract on various other issues that will be proved by others.



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The Solution Continued...

Termination / Remedies

1. GC was entitled to terminate Subcontractor's contract pursuant to the Contract Provisions based on Subcontractor's multiple breaches.
2. GC gave written Termination Notice to Subcontractor.
3. GC took over the completion of the project pursuant to the Remedy Provisions in the contract.

Damages

1. GC is entitled to recover from Subcontractor the GC's damages due to termination of Subcontractor for multiple breaches of the contract.
2. GC's damages include the Cost to Complete the Project in excess of the Original Contract amount plus approved Change Orders.
3. GC is entitled to recover other damages pursuant to contract provision contained in Contract Section 21, (a) Damages on Breach.

We elaborated and supported each of the above claims with (A.) contract clause references, (B.) project documents, and (C.) testimony references.

Our report included a framework for a damages calculation that included placeholders for Additional Consequential Damages (to be proven at arbitration) and Attorney Fees, Expert Fees, and other collection costs.

Finally we offered Conclusions, in a deposition and in arbitration testimony, including:

1. Subcontractor failed to perform in accordance with the contract, failing to completely perform the scope of work and deliver the project conforming with the contract schedule, in addition to the fact that non-payment to sub-subcontractors and suppliers led to recorded liens.
2. Subcontractor was given ample opportunity to finish the work.
3. GC was entitled to terminate Subcontractor (pursuant to the contract) due to Subcontractor's multiple breaches.
4. GC is entitled to recover damages as a result of Subcontractor's breaches.
5. Damages include the cost to complete the Project in excess of Subcontractor's contract price (including change orders).
6. Damages also include consequential damages per the contract.

