

Construction Contract Claim/Construction Defects

Boutique Hotel with Defects & Delays

The Problem

This project concerns a hybrid of construction defect and contract claims at a luxurious, three-story, 150-room boutique hotel. The hotel Owner and General Contractor entered into a contract with a \$22.6 million schedule of values for work based upon 75% complete bid drawings, and work began. Over the course of the next 19 months there were almost 400 RFIs (Requests for Information) that took an average of 31 days for response, and the architect issued 23 plan set updates ("Deltas"). As a result the Owner was playing a non-stop game of whack-a-mole with change orders, "value-engineering" in attempt to maintain the budget, and pulling work from the GC to contract directly with less expensive contractors. By the end of the project the GC's contract was down \$1.4 million to \$21.2 million.

As the project approached completion, the tone of communication became aggressive, change approvals ceased, and so did payments. The GC did all they could to keep the project moving but delays became inevitable. The Owner ultimately terminated the GC with \$3.6 million unpaid. The delay in occupancy triggered a loss of income claim. The Owner made a \$14.2 million claim against the GC for liquidated damages (\$1.1), defects (\$6.2), loss of use (\$6.1), and attorney fees (\$800K).

The Solution

Prior to our being hired, the GC had hired a consulting firm who charged hundreds of thousands in fees and the only work product was thousands of inspection photos and a "negotiated scope of repair" with the Owner's consultants, that we felt was more than twice what was sensible.

Pete Fowler Construction was hired to replace the first consultant, to un-screw this complex situation. A new attorney soon followed. We gained access to the GC's electronic project management software and compiled a sensible, comprehensible project file. We investigated and analyzed each of the defect allegations, including composing a scope of repair for legitimate complaints, and documentation to support an allocation of responsibility to the applicable parties. Our defect repair scope and cost totaled \$1.1 million, in contrast to the "negotiated scope" (\$2.7 million) and Owner's (\$6.2). We allocated these costs to 16 companies.

As for the delay claims that supported the liquidated damages and loss of use (totaling more than \$7 million) we analyzed the performance of key parties, concluding that the Owner and their agents, including the design team, had created a hostile environment, did not respond timely to RFIs, and did not accept legitimate change orders for additional costs and time based on the continually evolving plans.

Our client was pleased with our detailed analysis that included a hefty, graphic-intensive report, written in plain language that everyone could understand and use to make smart decisions. The case was then promptly settled.

