

Construction Claim

Pete Fowler Construction Saves Contractor \$500,000 in Damages Claims

The Problem

This project concerned a Southern CA theme park ride based on a big-budget action movie. The Owner employed an Owner-Builder project delivery method and contracted directly with a construction manager, Architect/Engineer, and 25 or so trade contractors. Our Client (the Defendant) was a steel fabricator who entered into an agreement as one of the trade contractors in 2010 to provide all labor and materials to furnish and install the Miscellaneous Metals (including cat walks, guardrails, etc...) for \$1.8 million. Our Client subcontracted with the Plaintiff, a steel rigging & erection contractor, for almost \$800,000 to perform all of the installation, per the subcontract between our Client and the Owner-Builder. Approved change orders to the Plaintiff totaled almost \$800,000 which brought the subcontract total to \$1.5 million. At the conclusion of the project, after our Client had released the Owner of any further claims, the Plaintiff submitted a claim letter to our Client, demanding more than \$500,000 in damages.

The Solution

Pete Fowler Construction collected, organized and analyzed a tremendous volume of project information, including course of construction documents, deposition and trial testimony, and opposing expert witness analysis. We concluded that the claim was without merit, and all of the claims were either not supported, could have been legitimately changed conditions but not for the plaintiff's own contracting negligence, or just plain kooky! Our client was a bit worried when the plaintiff's expert did an excellent job of packaging the claim professionally and, with a straight face, testified compellingly to the judge that the legitimate damages exceeded \$500,000. But due to the testimony of Pete Fowler Construction, the court found:

1. The claim was made late.
2. The contract should have been followed for change orders.
3. Plaintiff's claims were not proven.
4. Some of the claims were already the subject of approved change orders.
5. Although "exceptionally well qualified in project management, the analysis of job performance and cost estimating", the plaintiff's expert witness did not make her case on numerous grounds (including those also articulated by Pete Fowler Construction during testimony). The court found that the burden of proof was upon the plaintiff and they failed to do so.

