The Legal Corner

October 2015

ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

Last month we discussed the Spearin Doctrine, which basically states that a contractor is not liable for damages caused by his work if he followed the plans supplied to him. This month's "legal corner" looks at the other side to that coin: the **designer's liability.** We focus on powers and limitations of contracts: (1) their power to avoid Spearin; (2) their limited ability to avoid implied warranties and negligence; and (3) their power to impose time limits on starting lawsuits.

Contracting Away Spearin

Contracts can be a great way for designers to limit their liability. A prime example is that the savvy designer can limit its exposure under Spearin by including certain language in its contract. The right language basically needs to state that the contractor accepts responsibility for end results through performance specifications.

That good news for designers is, of course, a warning to contractors. Contractors should carefully review their contracts for this language, so that they don't unwittingly waive a Spearin defense.

Implied Warranty and Negligence

Despite their power to limit designer liability, contracts have limits. Some include broad language that tries to limit designer liability. But courts can conclude that this does not contract away the implied warranty that, by law, requires the designer's plans to be suitable for their intended use.

Moreover, designers have exposure for negligence claims, even to people with whom they never entered a contract. Claimants can base those claims on allegations that the designer supplied specifications containing false statements of fact or opinion, even about things like the cost of the project.

A key issue in those negligence claims is whether the designer breached a duty. That duty does not require perfection, but it does require the designer to exercise skill and judgment which can be reasonable expected from *similarly situated* professionals. To prove that the designer breached that duty, expert testimony is required.

Time Limits

Fortunately, construction liability doesn't go on forever. For example, a statute imposes a two-year time limit on how long a person can wait to bring a construction-defect claim, after discovering the alleged injury. (See October 2014 Legal Corner for more information on the statute of limitations and repose.)

BONUS – Quiz Question with Prizes

The first five correct answers (call or email us) get a $10 gift card to Dunn Bros. Coffee.

True or False: A general contractor may be liable for negligence if a sub-contractor is injured on the property, but an indemnity agreement is an effective way to shift that liability to the sub-contractor's employer. (Tip: See the June 2015 "Legal Corner")

If you have a construction law related question, please email it to csbronczyk@arthurchapman.com, or call (612) 375-5972. Every question will be addressed, whether or not it is included in an article.

This column is intended as a report of legal developments in the construction industry. It is not intended as legal advice. Readers of this column are encouraged to contact Arthur, Chapman, Kettering, Smetak & Pikala, P.A. with any questions or comments.


Jon Zentner


Juan Avila

612-339-3500
www.ArthurChapman.com


Corey Bronczyk