



Alerts

No Breach of Contract Where Code Not in Contract for Architectural Services

June 15, 2015

Professional Lines Alert

Mary Imogene Bassett Hospital v. Cannon Design, Inc., Supreme Court, Appellate Division, Third Department, New York, Docket No. 519411 (April 9, 2015)

Plaintiff hospital contracted with the defendant architectural firm to provide structural design services for a seismic retrofit of one of its buildings. Defendant's design used four steel plate sheer walls. The 2000 International Building Code (IBC) was not mentioned in the contract, though certain Code Standards were listed in the defendant's structural design criteria and in the technical drawings. The contract stated that the defendant's design services were to be provided "in a manner consistent with the standards of care and skill exhibited in projects of this nature." The contract did not permit any oral modifications. Plaintiff determined that the strength of the sheer walls was not properly calculated and proceeded to cancel the contract after three sheer walls were installed. Plaintiff filed an action against defendant alleging breach of contract and professional malpractice arising from the alleged defective design of the seismic retrofit. After a bench trial, the trial court determined that defendant breached the contract and committed professional malpractice and awarded plaintiff \$1.7 million in damages. At trial, both parties agreed that the 2000 IBC established the design standard. Plaintiff's expert testified that defendant had performed its calculations based on the 2000 IBC, but noted that this Code did not address such steel plate sheer walls and the defendant did not adhere to another design approach it had adopted. On appeal, a New York intermediate appellate court reversed on the breach of contract claim, but affirmed on the professional malpractice claim.

Question Before the Court

Whether the Architect was properly held liable for breach of a contract for failure to comply with Code Standards that were not mentioned in the contract?

No. The Appellate Division found that plaintiff failed to prove that compliance with the IBC was a contract requirement. The absence of design criteria in the contract did not create an ambiguity. Oral modifications were not permitted and the court refused to read compliance with the 2000 IBC into the contract. The clauses in the contract as to "professional skill and care" merely incorporated the common law standard into the contract and did not operate to convert a malpractice claim into a breach of contract claim. The court also held that the trial court should have dismissed the breach of contract action because it was

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duplicative of the malpractice claim.

The court proceeded to affirm the trial court's professional malpractice finding holding that plaintiff was only required to prove a departure from the accepted standard of practice in the relevant area. The plaintiff submitted sufficient expert evidence to establish that the defendant failed to meet the proper standard of practice in its design of the seismic retrofit. The defendant argued that it never completed its design due to plaintiff's cancellation of the contract because the fourth sheer wall was necessary to fully implement its design. The court disagreed, finding that plaintiff proved that the three sheer walls that were already installed were not properly designed, would not operate as intended, and would require remedial efforts to create a building that would withstand seismic events as contemplated by the parties.

What the Court's Decision Means for Practitioners

This holding that the architect's adherence to the code was not a contractual requirement can be valuable for cases in jurisdictions where an owner is limited to bringing a breach of contract action against architects and engineers based on the operation of the economic loss doctrine, which bars malpractice actions in tort for purely economic losses. This ruling could have gone the other way because the Code Standards reportedly were mentioned in the drawings, which presumably became contract documents once they were signed, sealed and issued. This court decided to affirm on the malpractice claim based on expert testimony that the plaintiff simply had not received the design for a seismic retrofit that it had expected.

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