

Florida Court of Appeals Clarifies How the Statute Governing Indemnification Provisions in Construction Contracts Applies

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In *Blok Builders, LLC v. Katryniok*, 2018 Fla. App. LEXIS 1312, the Court of Appeals of Florida for the Fourth District considered whether Florida Statute § 725.06 applied to a contract for the excavation of various neighborhood easements containing telecommunication lines. The court held that the statute did not apply because the contract for the excavation work was unrelated to a "building, structure, appurtenance, or appliance," as explicitly required by the statute. The court's analysis highlights the importance of thoroughly analyzing statutes and considering (and anticipating) their most narrow interpretations.

The plaintiff in *Katryniok* claimed that he suffered personal injuries sustained when his driveway collapsed, purportedly as the result of excavation work related to telecommunication lines. BellSouth Telecommunications, LLC ("BellSouth") owned the telecommunication lines and contracted Mastec North America, Inc. ("Mastec") to excavate and provide access to various underground lines located in neighborhood easements, including the lines near the plaintiff's property. Mastec subcontracted Blok Builders LLC ("Blok") to perform the excavations.

The subcontract between Mastec and Blok included indemnification provisions requiring Blok to indemnify Mastec and "its directors, officers, employees and agents" for all claims, actions and liabilities, including those alleged to be caused by the acts or negligence of Mastec. The subcontract also incorporated the contract between BellSouth and Mastec, which included a provision requiring Mastec to indemnify BellSouth for any loss, claims or liabilities.

The plaintiff filed suit against Blok, and later amended the complaint to join Mastec and BellSouth as defendants. Mastec and BellSouth filed crossclaims against Blok, alleging that Blok agreed to indemnify them in its subcontract with Mastec. Blok argued that the indemnification provisions in its contract with Mastec and Mastec's contract with BellSouth, which was incorporated by reference into the subcontract, were unenforceable because, lacking a monetary limitation, they did not comply with Florida Statute § 725.06. Section 725.06 dictates that a contract for or in connection with "any construction of a building, structure, appurtenance, or appliance, including moving and excavating associated therewith" is void unless there is a "monetary limitation" on any indemnification related to the contract.

All defendants filed summary judgment motions on this issue. The trial court found in favor of Mastec and BellSouth, holding that § 725.06 did not apply and, thus, the contracts required Blok to indemnify the other defendants.

The Florida Court of Appeals, focusing not on the monetary limitation language but on other language in the statute, found that Florida Statute § 725.06 was unambiguous and explicitly applied to contracts related to the construction of a building, structure, appurtenance or appliance. The court found that the excavation involved the laying and maintenance of utility lines and did *not* relate to a "building, structure, appurtenance, or appliance." As such, the court affirmed the lower court's ruling that the statute did not apply to the contracts for this project. While the court found the indemnification provisions enforceable, it also found that none of the contracts' provisions required Blok to indemnify BellSouth. Thus, with respect to BellSouth, the court reversed the lower court's ruling finding that Blok had a duty to indemnify BellSouth.

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The *Katryniok* case establishes that, when deciding whether to challenge indemnification provisions in Florida subrogation matters for a lack of monetary limits as dictated by Florida Statute § 725.06, it is critical to first consider whether the construction is of the type that falls within the scope § 725.06. If the construction work at issue is not related to a building, structure, appurtenance or appliance, and thus § 725.06 does not apply, the contract need not have monetary limits on indemnification. The *Katryniok* decision also exemplifies how critical each and every word of a statute is to the interpretation and application of the statute.

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