

The Saiber Construction Law Column: October 2022

November 29, 2022

Source: Metro Builder's Onsite Magazine

When it comes to contracts, New Jersey courts, like courts in other jurisdictions, enforce them according to their plain and ordinary meaning. So when a contract's terms are clear, the court will enforce it as written. The Supreme Court of Washington recently applied these principles in *Conway Constr. Co. v. City of Puyallup* when it looked at, among other issues, whether the City terminated a construction contract for cause or for convenience – two provisions which often provide a basis for the early termination of a construction agreement.

In the *Conway* case, the parties' contract permitted the City to terminate the agreement early either for cause (i.e., because of a default by the contractor, such as for defective performance) or for convenience (i.e., terminating the agreement at will, provided it was not done in bad faith). A termination for convenience would entitle the contractor to greater damages than if it was terminated for cause because, under the parties' agreement, a contractor terminated for convenience was entitled to be paid for all actual work it performed until the date of termination. In *Conway*, the City terminated the contract, claiming it was because of the contractor's alleged breach of the agreement. However, after a non-jury trial, the trial judge ruled that the termination was not for cause, which converted the City's termination to one for convenience. The Supreme Court of Washington ultimately affirmed that decision.

In reaching this conclusion, the Court looked at the language of the contract. According to the Court, the contract allowed termination "based on defective work only if the contractor 'neglects or refuses to correct rejected Work.'" The agreement further provided that upon 15 days' written notice, the contractor had to remedy the work to the satisfaction of the City. At trial, the contractor established that it took steps to remedy the alleged defaults and reached out to the City to determine if the corrective efforts were sufficient. The City, however, refused to meet with the contractor. The trial judge therefore found that the contractor was not neglecting or refusing to correct the defects and that City's failure and refusal to meet with the contractor to discuss the remedial actions was "unreasonable or made in bad faith," which had the effect of making the termination one for convenience rather than for cause. As the Court stated, "our decision today is bound by the terms of the contract."

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The *Conway* case was decided under Washington's state law, so it is not binding on New Jersey courts. However, the basic contract principle illustrated by *Conway* – that a court's decision is bound by the terms of the parties' contract – is one that would apply in New Jersey as well. Contractors should therefore carefully read their agreements, especially when the agreement is drafted by the other party to the contract, and understand all of its terms before signing. Then, if

a dispute arises, the contractor can use the plain language of the contract to argue in support of its position in the dispute.

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Each issue's Legal Construction Column will discuss a recent decision by New Jersey courts or, like here, courts from other states which may be of interest to people in the construction industry. The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel. For any question relating to this article, please contact Robert B. Nussbaum, Esq. at Saiber LLC at rnussbaum@saiber.com.