

The Saiber Construction Law Column: September 2025

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New Jersey courts enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances, and the underlying purpose of the contract. When the intent of the parties is plain and the contract language is unambiguous, the court will enforce the agreement as written unless doing so would lead to an absurd result. On May 28, 2025, the Supreme Court of Oklahoma, in a case titled *Flintco, LLC v. Total Installation Mgmt. Specialists, Inc.*, applied these principles in an Oklahoma case involving a contractor's lawsuit against a surety company.

The contractor sought reimbursement under a performance bond of costs incurred to complete the work of the subcontractor who procured the bond. In *Flintco*, the contractor had the right under its subcontract to perform and finish the subcontractor's work and to provide labor and materials needed to complete the work in the event of a default by the subcontractor. However, the performance bond required the contractor to provide notice of the subcontractor's default to the surety. Such notice was not provided in a timely manner by the contractor. Thus, relying on the bond's notice provision, the surety refused to reimburse the contractor for the costs it incurred to complete the subcontractor's work.

The Supreme Court of Oklahoma ruled in favor of the surety company, finding that a "bond agreement is a contract" and, as such, the Court had to "adhere to the general terms of contracts regarding the interpretation of the written terms." The Court examined the bond's language and held that its notice provisions were a condition precedent to the surety's obligation, i.e., notice had to be given by the contractor to trigger the surety's liability under the bond. The Court stated, "Failure to give a surety prior notice and an opportunity to exercise the performance options in the performance bond relieves the surety of its liability."

Because New Jersey's laws for interpreting contract language are similar to those in Oklahoma, it is likely that a New Jersey court would similarly enforce a contract's condition precedent language. Thus, if a party to a contract failed to meet a condition precedent, the other party may not be required to perform its obligations under the contract.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts (or courts from other states) or other legal topics 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 ensure this information is up-to-date. The article is not intended to be a full and

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