
Contractors can be Liable for Following Owners' Directives

Description

In *Downey v. Chutehall Construction Co.* (Lawyers Weekly No. 11-001-16), the Massachusetts Appeals Court ruled a contractor can be liable for violating building codes despite the fact that the party suing it directed the contractor to perform the non-compliant work.

The contractor argued that the owner told it the roof had only one layer of roofing materials on it and directed the contractor to install another layer of roofing material directly on top of the existing roofing materials. The contractor knew the building code prohibited it from installing more than two layers. However, relying upon the owner's assurance that only one layer existed, the contractor followed the owner's directive and installed another layer of roofing material.

A few years later, the owner hired another contractor to perform HVAC work. This contractor discovered the roof actually had four layers of roofing material and was leaking. The owner then hired a second roofing contractor to strip the roofing material, repair the leak, and install new roofing material. The owner sued the first roofing contractor for those costs.

The question before the Court was whether the owner waived its statutory right to damages against the contractor by directing the contractor to perform the non-compliant work. The Court answered "no". Specifically, Massachusetts has a statutory scheme that permits the recovery of damages against contractors who violate building codes. The Court ruled a statutory right may not be waived if the waiver would undermine the public policy underlying the statute. The building code and statutory rights relating to it were designed to ensure public safety, health and welfare. The Court found that permitting a waiver of owner rights to compel a contractor to comply with the building code would permit and even encourage endangering future owners, first responders, and the public in general and, consequently, would undermine the statute. As a result, despite being directed by the owner to perform the non-compliant work, the contractor was liable to the owner for the consequences of such non-compliant work.

In summary, contractors are obligated to perform their work in accordance with the building codes. A failure to do so, even when directed by third parties, may result in contractors being exposed to liability.

Drew is a Partner and Co-Chair of the Firm's Construction Group. He earned the AV® Preeminent Rating from Martindale Hubbell which represents the highest possible rating on both legal ability and ethics based upon the confidential opinion of peers and judges. His practice focuses on the construction industry including drafting and negotiating contracts and handling payment and performance issues.

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Date Created

January 22, 2016