



Contractor Found In Material Breach Solely For Building Code Violations

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In a recent case out of Indianapolis, the Indiana Court of Appeals held that building code violations constituted a material breach by the general contractor of its contract with the property owner. As a result, the court determined that the general contractor could not enforce provisions of the contract against the homeowner or assert lien rights, because the general contractor committed the first material breach of the contract.

The ruling in [A House Mechanics Inc. v. Massey](#), 124 NE3d 1257 (2019), has several potential implications. Most importantly, the court's determination that a building code violation constitutes a material breach of contract could expose general contractors to significant liability where a building code violation may be *de minimis*.

According to the *Massey* court, the parties' contract required the general contractor to "comply with all applicable building codes." This provision is very typical and included in almost every construction agreement. Whether a minor building code violation gives rise to material breach is not specifically discussed by the court in *Massey*, and its holding could have significant ramifications for general contractors in the state of Indiana.

The *Massey* court analyzed the purpose and intent behind this requirement, noting that "the term of the contract requiring that the work comply with

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applicable building codes can only have meant that it must always be in compliance.” Despite using the word “always,” the court said that there was no breach where code noncompliance was based on the mere fact that work was in progress but not yet finished. However, where many parts of the construction work were simply wrong, defective or noncompliant from the outset, such violations constitute a material breach of the contract.

The court’s opinion in this case may have significant ramifications for general contractors who could forfeit contractual rights because of prior building code violations. Parties to construction contracts would be wise to carefully consider provisions such as the one in *Massey*, because they may substantially shift the parties’ rights and burdens in the event of a dispute.