

## NEWSLETTERS

### Missouri Adopts And Reaffirms The Spearin Doctrine

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#### **Barnes & Thornburg Construction Law Update, May 2018**

As the construction industry hits its stride in America, it is critical for contractors to understand their exposure and potential defenses to construction defect claims. Contractors are told to strictly adhere to contract specifications to avoid liability for breach of contract. However, the specifications may also hold the key to a successful defense to defective workmanship claims under what is known as the Spearin doctrine. The Spearin doctrine has its roots in a 1918 U.S. Supreme Court decision which absolved a contractor from liability for defective workmanship where the contractor could prove that it strictly adhered to the plans and specifications. See *United States v. Spearin*, 248 U.S. 132 (1918).

Under *Spearin*, a contractor will not be liable to an owner for loss or damage that arises from defects in the plans and specifications so long as the contractor adheres to the plans and specifications. In other words, the owner implicitly warrants that the plans and specifications, if followed, will achieve the desired result.

In a recent Missouri appellate decision, the court recognized and reaffirmed the *Spearin* doctrine on a high school renovation project. In *Penzel Construction v. Jackson R-2 School District et al.*, No. ED103878 (Mo. Ct. App. Feb. 14, 2017), the general contractor sued a school district for furnishing defective plans and specifications that caused delays and cost overruns on the project. The electrical contractor alleged that providing the deficient plans was a breach of the owner's implied warranty of the adequacy of the plans and specifications. The owner furnished the plans and specifications to the contractor who, in turn, provided them to mechanical, electrical and plumbing subcontractors. During the bid procurement, none of the parties working on the project noticed any errors in the plans or specifications. After the project experienced significant delays due to numerous design errors, the electrical subcontractor asserted a delay claim based on alleged design defects.

Under *Spearin*, if the electrical subcontractor followed the plans and specifications which then turn out to be defective, it will not be liable for increased costs to correct design deficiencies. Nearly every state has adopted Spearin as the standard, but not all. In *Penzel*, the court had to first address whether the contractor's Spearin claim was actionable in Missouri. In reaching its decision, the court reasoned:

If a contractor makes a bid in reliance on a governmental entity's representations of what a project will entail, he should not be

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punished – and the entity should not receive a windfall – because the entity’s renderings were defective. In effect, the contractor would be punished for having to perform a contract he did not truly agree to enter. On the other hand, the governmental entity would be rewarded for failing to accurately represent the performance it sought by inducing artificially low bids from inculpable contractors. This result is at odds with the notion that we should try to place parties in the same position they would be in if the contract agreed upon was performed without breach. Thus, considering contract principles established by Missouri precedent, we believe Spearin claims should be permissible causes of action in our State.

The *Penzel* court noted that the Spearin doctrine aligns with principles established by prior Missouri case law and is essentially a breach of contract claim at its core. After adopting the Spearin doctrine, the Penzel court then addressed two key issues: First, whether expert testimony was necessary to establish a *Spearin* claim and second, whether the electrical subcontractor established a viable claim for damages under either the total cost method or modified total cost method, an issue of first impression under Missouri law.

In regards to the first issue, the court found that it was unnecessary to present expert testimony on whether the owner’s architect fell below a reasonable standard of care to establish a *Spearin* claim. “Although electrical engineering is highly technical and complicated in general, most of the problems alleged by Penzel, and testified about by its witnesses, were simple enough for a layperson to understand,” the ruling said. The court ultimately found that the electrical subcontractor had sufficiently met its burden as to whether the plans were defective.

As to the second point, the court found that there was sufficient evidence to determine that losses were suffered and the amount of the damages claim. The court first analyzed the total cost method which allows a contractor to calculate his losses by subtracting his bid amount from the total cost he incurred to fulfill his contractual obligations. However, this method assumes the breaching party is the sole and exclusive cause of the non-breaching parties’ damage, even though the additional costs could have been caused by a myriad of factors. By contrast, the modified total cost method expands upon the total cost approach by reducing any additional costs attributable to the plaintiff’s own errors. In *Penzel*, the court applied the modified total cost approach and found that the contractor presented an “adequate basis” for calculating a rational estimate of damages to be awarded. The court denied the owner’s motion for summary judgment and submitted the matter of damages to the jury.

The decision in *Penzel* reaffirms the application of the *Spearin* doctrine and illustrates the importance of following the plans and specifications.

For more information about this topic and the issues raised in this article, please contact Scott R. Murphy ([smurphy@btlaw.com](mailto:smurphy@btlaw.com).) in our Grand Rapids office at (616) 742-3938.

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