

Do Architect's Certifications End Disputes About Contract Payments?

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May 18,
2020

Jerrick Assoc. v. Rudd Realty Kirchoff-Consigli v. Dharm We wish it were so easy. Last month, in a New York County Supreme Court case, the judge held that they don't. (NY County Supreme Court April 15, 2020). This is correct, but only if the contract says they don't. Otherwise, they should end any dispute about whether money is owed to a contractor. The certifications, after all, often mean "based on on-site observation and data comprising the pay application that work has progressed to the point indicated and the quality of the work is in accordance with the contract and the contractor is entitled to payment." This is what the contract stated in the case of (Dutchess County Supreme Court August 28, 2018) and where the court in that matter held money was due without dispute because of it.



Jerrick In , however, the court held differently, pointing out:

"Plaintiff's argument that the architect's certification of its application for payment demonstrates its performance under the contract lacks merit because it fails to cite any contract provision which provides this. Indeed, paragraph 17 of the contract contradicts plaintiff's position, as it provides that the owner's acceptance of the work does not constitute an acknowledgment that the work has been performed in accordance with the terms of the agreement. Accordingly, plaintiff's motion for summary judgment must be denied."

Correctly decided? We don't think so. Because here's what the certification stated: "The Architect's signature here certifies that, based on their own observations, the Contract Documents and the information contained herein, this document accurately reflects the work completed in this Application for Payment. The Architect also certifies the Contractor is entitled to the amount certified for payment." Although this statement is in the certification, rather than the contract, that fact makes no difference. The Architect is the owner's agent; it's as good as the owner's own statement.

What of the contradicting terms in the contract that supposedly existed and that the court relied on? Well they're not contradicting; we checked on ECF. What they are are just boilerplate provisions that provide an independent claim for the owner against the contractor when faced with faulty workmanship. They do not rebut the Architect's certification. In other words, the contractor should have been granted summary judgment on his claim based on the certification and the owner should have simply been able to continue his own claim (whether in the form of a counterclaim or the affirmative defense of an offset) that the work was defective.

The case and supporting material were frustrating to read. Unfortunately this happens every so often. It is the state of affairs not only in contractor litigation, but with litigation in general. Crap shoots are real. But they are the best remedy we have so far. As we often say, try enforcing a contract in any other country, and you'll start appreciating the system we have here.

-Mat Paulose Jr., Esq.

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