Superior Court Affirms $2.3 Million Award Against General Contractor for Fraud Against Owner

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On October 12, 2012, the Superior Court of Pennsylvania affirmed an award entered against a general contractor in excess of $2.3 million for a fraud scheme it perpetuated during the course of a $79 million construction project. The original lawsuit which gave rise to the appeal named J.J. DeLuca Co., Inc. v. Toll Naval Assoc., 2012 Pa. Super. 222 (2012), stemmed from the Naval Square project for the construction of townhomes and condominiums in Philadelphia. Project owner, Toll Bros., Inc. ("Toll"), engaged J.J. DeLuca Company, Inc. ("DeLuca") as its general contractor. During the project, DeLuca complained about Toll's delays in obtaining permits, timely turn around of shop drawings and work that Toll directed to be performed out of sequence. Toll challenged DeLuca's quality of work and its failures to meet the contract schedule. DeLuca ultimately sued Toll for amounts withheld as retainage, alleging breach of contract, unjust enrichment and violation of the Contractor and Subcontractor Payment Act ("CASPA"). Toll responded with counterclaims against DeLuca for costs of completion and liquidated damages.

Despite Toll discovering a significant fraud scheme of DeLuca, the Philadelphia trial court awarded DeLuca $2.1 million. Toll uncovered the scheme whereby DeLuca directed personnel to submit invoices to Toll for work which was not performed on the Naval Square project, in order to pay subcontractors for other work for DeLuca on other projects. After discovering the fraud scheme, Toll attempted to amend its claims against DeLuca to include a punitive damages claim for fraud, but the trial court denied Toll's amendment.

On the first of two appeals, the Superior Court reversed the Philadelphia trial court, ruling that Toll's punitive damages claim should not have been dismissed by the trial court. After the

Superior Court sent the case back down to the trial court, the trial court found clear acts of fraud by DeLuca and entered a $4.5 million verdict in favor of Toll, resulting in a net award to Toll of $2.37 million.

The second appeal to the Superior Court most recently affirmed the award of $2.37 million to Toll. The Superior Court rejected several arguments made by DeLuca, sustaining Toll's punitive damages claim. The Superior Court specifically ruled that Toll's fraud claim was not barred by the statute of limitations, which limits the amount of time a party has to file a claim. The Court specified that the discovery of a fraudulent act is the specific event which triggers the statutory period to run. Toll did not discover DeLuca's fraud until the underlying claim was active, within the applicable statute of limitations when the fraud claim was filed.

The Superior Court also ruled that Toll's fraud claim was not barred by the "gist of the action" doctrine. Under the gist of the action doctrine in Pennsylvania, a plaintiff cannot assert a tort claim, such as negligence or fraud, when that tort theory is merely another way of stating a breach of contract claim, or when its success would be wholly dependent upon the terms of the contract. In other words, courts may dismiss a tort claim which simply mirrors a contract claim. For Toll, the fraud claim was not the same as, or even collateral to, its contract claim against DeLuca. DeLuca's fraudulent acts (submission of fraudulent invoices), had nothing to do with performance of the contract. Therefore, the Superior Court did not dismiss Toll's fraud claim pursuant to the gist of the action doctrine.

Finally, the Superior Court denied DeLuca's argument that the award of punitive damages was excessive. The Court disagreed with DeLuca and found the amount of punitive damages awarded against it to be lawfully permissible.

Please contact Matthew I. Sack, Esq. at Davis, Bucco & Ardizzi, at msack@davisbucco.com or 610-238-0880, with any questions related to this article, or any other issues.