

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH DEPARTMENT

Rifenburg Construction, Inc. v. State

90 A.D.3d 1498 (4th Dep't 2011) · Decided December 23, 2011

SUMMARY

The New York Appellate Division considers the State’s motion for summary judgment concerning claims by a construction contractor for compensation for extra work on a Department of Transportation project. The court held that the contractor’s failure to comply with contractual notice and reporting requirements defeated its claims for extra traffic-control and survey work, but triable issues remained regarding bridge construction costs and quantity underruns. The court also upheld the denial of summary judgment on the contractor’s claim for interest based on allegedly untimely final payment and dismissed the contractor’s cross appeal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Department
WRITING FOR THE COURT	Fahey, J.P.; Garni, J.; Sconiers, J.; Gorski, J.; Martoche, J.
JURISDICTION	New York
DECIDED	December 23, 2011
DISPOSITION	other
PROCEDURAL POSTURE	The State appealed from an order of the Court of Claims denying portions of its motion for summary judgment dismissing the first through fourth and seventh causes of action in Rifenburg Construction's claim for compensation for extra work and interest. Rifenburg filed a cross appeal.
STANDARD OF REVIEW	Summary judgment is proper when the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	published appellate memorandum; precedential under New York law
PARTIES	State v. Rifenburg Construction, Inc.

TOPICS

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QUESTIONS PRESENTED

1. Whether the State was entitled to summary judgment dismissing claims for extra traffic-control and survey work because Rifenburg failed to comply strictly with contractual notice and reporting requirements.
2. Whether triable issues of fact precluded summary judgment on Rifenburg's claim for additional bridge-construction costs allegedly caused by Department of Transportation design errors despite an untimely notice.
3. Whether triable issues of fact existed regarding Rifenburg's knowledge of quantity underruns and changes that allegedly supported a claim for additional compensation.
4. Whether the State was entitled to summary judgment dismissing the claim for interest under State Finance Law § 179-f based on the asserted timeliness of its final payment.
5. Whether Rifenburg's cross appeal had to be dismissed because Rifenburg was not aggrieved by the order.

HOLDINGS

1. Contract provisions requiring prompt notice and documentation of claims for additional compensation are conditions precedent to suit or recovery, and express conditions must be literally performed; substantial performance is insufficient. Strict noncompliance generally waives the claim for additional compensation.
2. The State was entitled to summary judgment dismissing the third and fourth causes of action because Rifenburg failed to comply with the contract's notice and reporting requirements and did not raise a triable issue of fact.
3. Summary judgment was properly denied on the first cause of action because, although the State established an untimely claim under the contractual notice provisions, Rifenburg submitted evidence creating a factual issue concerning the Department of Transportation's knowledge of design errors and indications that Rifenburg would be compensated.
4. Summary judgment was properly denied on the second cause of action because Rifenburg raised triable issues of fact as to whether it knew or should have known of the quantity underruns in light of numerous project additions and deletions.
5. The State was not entitled to summary judgment dismissing the seventh cause of action for interest under State Finance Law § 179-f because the 18-month period between acceptance of the work and written notice of missing documentation was not excluded when calculating the timeliness of final payment.

6. Rifenburg's cross appeal was dismissed because Rifenburg was not aggrieved by the order denying the State's motion.

KEY QUOTATIONS

“Express conditions must be literally performed; substantial performance will not suffice”” (90 A.D.3d at 1498)

“Failure to strictly comply with such provisions generally constitutes waiver of a claim for additional compensation”” (90 A.D.3d at 1498)

FACTUAL BACKGROUND

The New York State Department of Transportation contracted with Rifenburg Construction to reconstruct 6.9 miles of Route 332, including widening the road and building two bridges, at a cost exceeding \$26 million. After the project was completed, Rifenburg sought additional compensation for extra traffic-control work, survey work, bridge construction costs allegedly caused by design errors, quantity changes and underruns, and interest based on allegedly late final payment. The contract required prompt notice of extra-work claims and daily force-account-work reports, with strict compliance.

PROCEDURAL HISTORY

After completing a New York State Department of Transportation road reconstruction project, Rifenburg commenced an action in the Court of Claims seeking compensation for extra work under the construction contract and interest on allegedly untimely final payment. The Court of Claims denied portions of the State's summary-judgment motion. The Appellate Division modified the order by granting summary judgment dismissing the third and fourth causes of action, affirmed the denial of summary judgment as to the first, second, and seventh causes of action, and dismissed Rifenburg's cross appeal because it was not aggrieved.

DISPOSITION

other

CASES CITED

- A.H.A. Gen. Constr. v. New York City Hous. Auth., 92 N.Y.2d 20, 30-31, 33-34 (1998), rearg. denied, 92 N.Y.2d 920 (1998)
- Sicoli & Massaro v. Niagara Falls Hous. Auth., 281 A.D.2d 966 (2001)
- Tug Hill Constr. v. County of Broome, 270 A.D.2d 755, 756 (2000)
- MHR Capital Partners LP v. Presstek, Inc., 12 N.Y.3d 640, 645 (2009)
- Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co., 86 N.Y.2d 685, 690 (1995)
- Fahs Rolston Paving Corp. v. County of Chemung, 43 A.D.3d 1192, 1194 (2007)
- Bat-Jac Contr. v. New York City Hous. Auth., 1 A.D.3d 128 (2003)
- Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980)
- Weichert v. Shea, 186 A.D.2d 992 (1992)

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