

Massachusetts Appeals Court Holds General Contractor's Schedule Compression Bars Enforcement of No Damages for Delay Clause

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By Peabody & Arnold on July 6, 2017

The Massachusetts Appeals Court has held that where a general contractor negligently managed a project and improperly refused to grant deadline extensions to its subcontractors, a “No Damages for Delay” contract clause did not bar a subcontractor from recovering its increased labor costs that were incurred to meet the general contractor’s compressed project deadlines.

No Damages for Delay clauses prohibit a subcontractor from seeking money damages as a result of delays in the construction project, no matter the cause. Instead, a subcontractor’s sole remedy is an extension of time to fully perform its work, but only as long as the subcontractor did not cause the delay. These clauses have long been held enforceable in Massachusetts. *State Line Contractors v. Commonwealth*, 356 Mass. 306 (1969). There are certain exceptions to a No Damages for Delay clause, including a general contractor’s “arbitrary and capricious conduct” that produces the delay, or its refusal to extend the time for performance of the contract. *See Findlen v. Winchendon Housing Authority*, 28 Mass. App. Ct. 977 (1990).

These issues were present in *Central Ceilings, Inc. v. Suffolk Construction Company, Inc.*, 91 Mass. App. Ct. 231 (2017). Suffolk Construction (Suffolk) was awarded the general contract to construct three dormitories at Westfield State University, and Suffolk accepted the bid of Central Ceilings, Inc. (Central) to, among other tasks, install door frames and drywall. Suffolk had financial incentives to finish the project by the substantial completion date, including receiving a six-figure bonus for completing the project on time or, if work was not complete, paying liquidated damages that increased the longer the project took to finish. Unfortunately, the project was riddled with delays and the trial court found that Suffolk failed to properly and efficiently manage the project. Central’s workers repeatedly set up and then broke down their equipment and ultimately had to work in the same space at the same time as other contractors. Nevertheless, with the financial incentives in mind, Suffolk made it known that it would not grant any extensions to the subcontractors to finish their work. Central had no choice but to increase its workforce to finish its work by Suffolk’s deadlines.

Central sued Suffolk to recover its increased labor costs totaling approximately \$321,000, among other damages. Suffolk argued that Central’s claim was barred by the No Damages for Delay clause in the parties’ subcontract. Judge Jane Haggerty of the Massachusetts Superior Court ruled in favor of Central, and the Appeals Court affirmed the ruling. Justice Kenneth Desmond, writing for the Appeals Court, held that Central was entitled to damages for two reasons. First, Suffolk, in an attempt to collect its six-figure bonus, materially breached the subcontract by refusing to grant Central any extensions to complete its work. Second, Central did not seek damages because it had been delayed but instead because it had to increase its workforce due to the compressed work schedule. Because Central’s damages were not due to a “delay,” the No Damages for Delay clause did not apply. Instead, Central’s damages consisted of the costs above and beyond its initial budget upon which it based its original project bid. Further appellate review of the decision was denied on June 22, 2017.

The *Central Ceilings* case follows the national trend to set aside a No Damages for Delay clause where the general contractor actively causes the delay or prevents the subcontractor from finishing the project on budget. If there are additional cases that follow the *Central Ceilings* precedent, general contractors may begin revising their No Damages for Delay clauses to include any damages that result from job compression or acceleration. General contractors and subcontractors should carefully review their contracts for these clauses.