QUARTERLY NEWSLETTER

MUZI & ASSOCIATES

FALL 2008

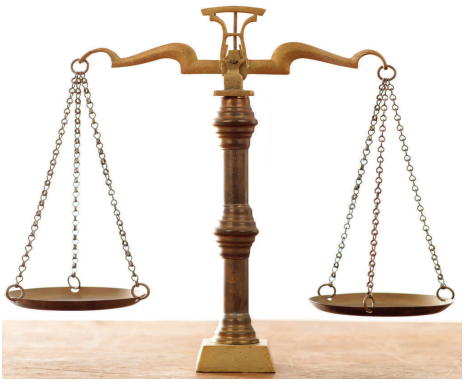
Inside This Issue:

Muzi & Associates
Lawyers
1851 E. First St., Suite 1257
Santa Ana, CA 92705-4017
Phone: (949) 553-9277
Fax: (949) 553-9288
www.muzilaw.com

If you have any questions regarding this newsletter or any public or private works construction issues, contact Andrew C. Muzi, Esq. at Muzi & Associates (949) 553-9277.

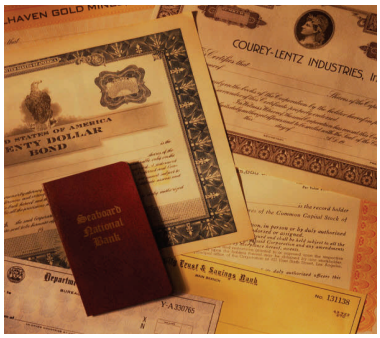
LANDMARK CALIFORNIA CASE HOLDS SUBCONTRACTOR MUST INDEMNIFY GENERAL CONTRACTOR

In a landmark case that came down from the California Supreme Court in July 2008, the court held that a subcontractor who had an indemnity provision in its contract with the general contractor was liable for the general contractor's attorney's fees and costs in defense of the action - even where the subcontractor's work was found by the jury not to be at fault for the alleged damages, Crawford v. Weather Shield Mfg. Inc., 79 Cal. Rptr. 3d 721 (July 2008). This case clarifies prior case law and stands for the notion that a subcontractor, who agrees to indemnify a general contractor for actions arising from its work, is responsible for paying the general contractor's attorney's fees and costs in defense of those allegations, regardless of whether the subcontractor is found to be negligent in its work. However, the subcontractor is entitled to assume the defense and control of the litigation so where the general contractor refuses a good faith proffer of defense by the subcontractor, the general contractor is on its own and cannot recover attorney's fees and costs from the subcontractor. For more information regarding contractual indemnity, contact Andrew C. Muzi, Esq. at Muzi & Associates.



ONE BOND CAN DO THE TRICK

In the case of T.O. IX v. Superior Court, 165 Cal. App. 4th 140 (July 2008), a contractor built a street through a nine-home subdivision and claimed money was owed for his work. After not receiving payment, he recorded a mechanic's lien on each of the nine lots for the full amount owed. The developer wanted to post a single surety bond to release all nine liens, but the trial court refused. On appeal, the California Court of Appeal ruled that the developer could post a single bond to release all nine liens since they were all for the same amount and represented the same claim. Should you have any questions regarding lien claims, releases, or bonds, contact Andrew C. Muzi, Esq. at Muzi & Associates.



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"Common sense often makes good law."
William Orville Douglas

"May you live your life as if the maxim of your actions were to become universal law."
Immanuel Kant

OWNERS CAN PROTECT THEIR PROPERTY

One method available to owners in protecting their property from mechanic's liens is the posting and recording of a Notice of Nonresponsibility. This option is available to owners who (1) are not involved in any way with the construction project (2) properly post and record a Notice of Nonresponsibility in compliance with statutory requirements. This situation occurs most often when a tenant causes a work of improvement to be performed for his leased space. When this occurs, it subjects the entire property to mechanic's liens, unless the owner takes preventive action. The Notice of Nonresponsibility is a written notice which must be given within 10 days after the owner has obtained knowledge of the work of improvement on the site. Within that 10 day period, the owner shall (1) post the Notice of Nonresponsibility in some conspicuous place on the site and (2) record the Notice with the county recorder. Strict compliance with the statute is required in order for the owner to be protected by the Notice. If the owner posts and records the Notice in anticipation of improvements, the Notice is not effective, thus, the owner must post only after work has actually commenced. However, if the owner requests the work to be performed or requires the tenant through the lease agreement to make improvements, then the Notice of Nonresponsibility cannot be used. For more information on the Notice of Nonresponsibility or any other questions related to owner protection from liens, contact Andrew C. Muzi, Esq. at Muzi & Associates.

EARLY DETECTION

As it is true in medicine, it is also true in law. The earlier you can detect and diagnose a problem, the better your prospects in finding a cure. Often times during the course of a construction project or any business transaction, there are signs or symptoms of potential trouble. The earlier you seek advice from counsel, as to your legal obligations, rights and potential liabilities, the more options you may have and more control you may be able to exercise over the situation. Muzi & Associates encourages you to empower yourself with the information necessary to best protect your company's interests. Should you have any questions during the course of a project or transaction which may affect your ability to perform or get paid, contact Andrew C. Muzi, Esq. at Muzi & Associates.

GOVERNMENT CODE CLAIM UPDATE

When filing a lawsuit against a local governmental agency, contractors know that they must first serve a Government Code Claim, as required by Government Code Section 910. However, where contractors have failed to do so, governmental agencies have been successful in getting those lawsuits dismissed for failure to follow procedure. Recently, in Arntz Builders v. City of Berkeley 2008 Cal. App. LEXIS 1352, a contractor brought a lawsuit against a local governmental agency but failed to first serve a Government Code Claim. The Court of Appeal held that where the contract between the contractor and the local governmental agency called out for its own claim procedure, and the contractor followed that claim procedure, the contractor was not also required to serve a Government Code Claim.

This case is a good case for contractors in their pursuit of damages against governmental agencies, however, it serves as a reminder that contractors must be aware of and follow their contract terms if they later expect to enforce them. Should you have any questions regarding your claims or right to claims against a governmental agency, contact Andrew C. Muzi, Esq. at Muzi & Associates.

GET IT IN WRITING

Throughout the course of a project or transaction, terms to a contract almost always change from what was originally anticipated. Changes include deletions and additions to the original scope of work, extended completion dates, schedule changes, change in acceptable materials and changes in the contract price. While the parties engaging in these changes may be long time business associates or plain trusting, it is imperative that all changes, especially critical and significant ones, be confirmed in writing and preferably signed by both parties.

Thousands and possibly hundreds of thousands of dollars may be incurred in litigation where the parties fail to confirm their changes to the contract in writing and now recount two completely opposite versions of the story and what was agreed to. These cases are difficult to prove and often risky to try in court since the majority of the evidence comes from testimony and the courtroom becomes a battleground of "he said she said" with the judge or jury deciding who is telling the truth. To protect your interests and put yourself in a position of strength to best enforce your rights and remedies under law, get it in writing. For more information on contract enforcement, contact Andrew C. Muzi, Esq. at Muzi & Associates.

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