

DUGAN & MEYERS: OHIO SUPREME COURT RULES FOR PUBLIC OWNER

On April 25, 2007, the Supreme Court of Ohio released its decision in the *Dugan and Meyers* case and ruled in favor of The Ohio State University (OSU). The Court's decision appears to limit the Spearin Doctrine and places great emphasis on a contractor's requirement to their contract's notice and claim provisions.

This case arose from OSU's Fisher College of Business Project where Dugan Meyers Construction Co., Inc (Dugan and Meyers) served as the lead contractor on a \$20.9-million contract. Dugan and Meyers claimed to have incurred significant losses due to multiple design issues that ultimately delayed the project's completion.

In its decision, the Court declined to extend the Spearin Doctrine here in Ohio to "cases involving delay due to plan changes." Under the Spearin Doctrine, other courts have recognized that contractors are not responsible for the consequences of defects in the plans and specifications. Based on Dugan and Meyers, Ohio law now appears to confine the Spearin Doctrine to only those cases involving "job-site-conditions," rather than a wider spectrum of construction activities.



The Court also found that Dugan and Meyers' damages flowed from a "delay in the completion of a construction project due to plan changes." The Court then denied Dugan and Meyers' claim under the contract's No Damage for Delay provision, which was enforceable at that time.

Lastly, the Court found that Dugan and Meyers' failure to comply with the contract's change-order procedure was fatal. Specifically, the Court relied on the contract's change-order provision, which stated the contractor's failure to request

in writing an extension of time within 10 days after the occurrence of the condition necessitating the time extension "shall constitute a waiver by the Contractor of any claim for extension or for mitigation of Liquidated Damages." The Court noted that the Spearin Doctrine "does not invalidate an express contractual provision" and rejected Dugan and Meyers' argument that it was excused from complying with the specific change-order procedures set forth in the contract.

Looking forward, this decision will be used against those contractors that fail to follow the contract's terms for notice of claims and time extension requests. Unfortunately, this will probably cause contractors and owners to spend more energy and time on paperwork versus building a quality project.



By Donald W. Gregory, Esq.
Kegler, Brown, Hill & Ritter
65 E. State St., Suite 1800
Columbus, OH 43215
614.462.5400