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FOR IMMEDIATE RELEASE

LEGAL INFORMATION FOR: ROOFING CONTRACTORS OF SOUTH FLORIDA MEMBERS

All too often, litigation hinges on the contractual terms between parties. Below is an article addressing a recent appellate court decision that will help you better understand how Florida courts typically interpret roofing contracts, and some recommendations that need to be considered to protect your interests.

Peach State Roofing, Inc. v. 2224 South Trail Corp., 2008 WL 2150947 (Fla.App. 2 Dist.), 33 Fla. L. Weekly D1389

Peach State Roofing, Inc. (hereinafter referred to as "Peach State") contracted on August 2, 2001, with South Trail Corp. (hereinafter referred to as "Owner") to put a new roof on Owner's forty-year-old, 26,500-square-foot commercial building. The contract required Peach State to (1) "remove and discard existing roof system," and (2) "furnish and install Carlisle Single Ply membrane roof system," for a fixed price of \$63,500. The parties agreed that the contract provided that Peach State would be compensated for any required repairs to the metal decking that supports the roof system at \$3.50 per square foot. Owner did not contend that this provision required replacing the metal deck. The work was completed about December 20, 2001, with no charges having been made for metal deck repair.

Three years later, Owner filed suit against Peach State alleging that Peach State had breached the contract "by failing to properly remove and replace the roof" and that Owner "had suffered and will suffer damages including, but not limited to, repair costs, loss of rental income and costs incurred as a result of the water damage experienced from the improper roof repair/replacement."

The trial court specifically held that the contract did not require Peach State to remove and replace the existing metal decking but found that the "decking underlying the roofing system ... was in a seriously deteriorated condition at the time" Peach State performed the contract. The trial court also found that there was an implied term in the contract based on custom and usage which required Peach State to "notify the owner if the deck underlying the roof system is in a deteriorated condition" and held that Peach State had breached the contract by failing to notify Owner that the metal decking was deteriorated, thus enabling Owner to decide whether to replace it. The trial court further found that both the roof system and the metal decking would have to be replaced and that the current cost to accomplish such task would be \$364,000. It then awarded Owner \$364,000 in damages against Peach State.

Peach State appealed the trial court's ruling. The appellate court concluded that since Peach State had no obligation under the contract to replace the metal decking, it could not be reasonably charged with the cost of replacing it. Accordingly, the trial court's award of final judgment in favor of Owner was reversed and remanded for entry of judgment in favor of Peach State.

If you have any questions and/or concerns regarding this article please feel free to contact The Soto Law Group, P.A. at (954) 567-1776 with offices in Fort Lauderdale and Jacksonville, Florida.

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. Additionally, the information above is not intended to be legal advice. Please consult with an experienced lawyer if you have a specific issue or dispute.

As a Roofing Contactor what can you learn from this case?

- This is a typical roofing case where the appellate court could have ruled either way. The roofer's superior knowledge could have led to an imposed duty to warn/disclose of the existence of a "bad deck."
- This case is not unusual in that the initial contract price was for \$63,500 and the trial court awarded Owner \$364,000. Courts awards can often times exceed the initial contract price.
- What helped Peach State, and what is so vitally important, is the language set forth in the contract.
- The clearer the contract is - the less likely courts will introduce any other evidence to suggest and/or imply any non-contractual obligations.
- Owner's expert inspected the roof almost five years after the work was performed. It is not entirely clear whether there was a way of ascertaining at the time of inspection in 2006, whether the metal decking was deteriorating during the time the work was performed in 2001. The trial court did not directly address this issue.
- It is not uncommon in litigation for a Plaintiff to have one expert tendering an opinion that is the direct opposite of a Defense expert's opinion.

RECOMMENDATIONS

1. Review your contracts carefully to ensure that there is no ambiguity in the scope of work that will be performed.
2. Make sure your contracts have a provision indicating that the contract is the complete agreement.

A typical complete agreement provision provides for the following:

- Complete Agreement. This Agreement constitutes the complete agreement between the parties and incorporates all prior discussions, agreements and representations made in regard to the matters set forth here. This Agreement may not be amended, modified or changed except by a writing signed by the party to be charged by the amendment, change or modification.
- 3. Most important, include a Waiver of Consequential Damages in your contracts. This is a provision that limits your liability to the cost of repairing defective material, or workmanship.

A typical Waiver of Consequential Damages provides for the following:

- Waiver of Consequential Damages. In no event shall Roofer be liable to Owner for indirect, incidental or consequential damages, resulting from Contractor's performance, nonperformance or delay in performance of its obligations under the Contract, or from Contractor's delay, termination (with or without cause) or suspension of the work under the Contract.