

SJC Narrows “Strict Compliance” Rule for Construction Contracts, Finds Contractor’s False Payment Certifications Bar Recovery on Contract but Not Necessarily in Quantum Meruit



The Massachusetts Supreme Judicial Court this week handed down a ruling with wide-ranging implications for contractors and owners alike. The case involved a dispute between G4S Technology LLC (“G4S”) and Massachusetts Technology Park Corporation (“MTPC”), a state development agency charged with building a 1,200-mile fiber optic network to connect the state’s western and north-central nether regions. After a public bid, G4S was hired as the design-builder for the \$45.5 million project. The parties’ contract contained aggressive schedule milestones with substantial liquidated damages provisions; notably, it also explicitly permitted MTPC to terminate G4S for cause in the event G4S failed to pay its subcontractors on time.

The project achieved substantial completion seven months past the original contract date, in March 2014, after the parties wrangled over disputes related to the quality and timing of the work. G4S submitted a request for equitable adjustment seeking approximately \$10 million in additional money and an extension of time (to relieve it from liability from LDs). MTPC responded by rejecting the claim and asserting that G4S had caused the delays, and withheld \$4 million from payments otherwise due to G4S, representing \$2.7 million in LDs and \$1.3 million for costs/expenses associated with correcting and completing portions of G4S’s work. G4S sued MTPC in Superior Court for breach of contract, breach of warranty, and quantum meruit. MTPC counterclaimed for fraud and violations of G.L. c. 93A.

Discovery revealed that G4S had engaged in a pattern of falsely certifying that it had paid its subs on time. G4S nevertheless paid all of its subs in full, but not at the time it made its payment certifications. Seizing on this revelation, MTPC moved for summary judgment based on G4S’s intentional breach of the contract provisions. The Superior Court judge allowed MTPC’s motion, ruling that G4S could not recover on the contract without complete and strict performance of all of its terms.

The judge, relying on an older line of case law, also concluded that G4S could not recover under a theory of quantum meruit because it had engaged in bad faith that was more than de minimis. In a second summary judgment ruling, the court dismissed MTPC’s fraud and 93A claims against G4S. With respect to the fraud claim, the court held that recovery would be improperly duplicative because it was based on the same conduct as MTPC’s breach of contract claim. The SJC heard G4S’s appeal on direct appellate review.

The crux of G4S’s argument was “no harm, no foul” – that because it had in fact paid all of its subs in full, MTPC had suffered no harm as a result of G4S’s false payment certifications. G4S asked the SJC to overrule the traditional “strict performance” doctrine in favor of a materiality test that would preclude recovery on a design/construction contract only if the contractor’s failure actually caused the Owner harm.

From G4S’s perspective, the SJC’s ruling can best be described as a mixed bag. First, the Court rejected G4S’s argument regarding strict performance insofar as it applies directly to the design and construction obligations of the contract. Finding that G4S’s payment misrepresentations did not relate to those obligations, the SJC determined that the strict performance doctrine did not operate to bar G4S from recovery here. Nevertheless, the SJC found that G4S’s conduct upended an “essential and inducing feature” of the contract and therefore amounted to material breaches that precluded recovery on its contract claim.

Turning to G4S’s quantum meruit claim, the Court held that the determination whether a contractor acted in good (or bad) faith must take into account its conduct with respect to the contract as a whole – as opposed to isolated portions or obligations – and reversed summary judgment on that claim for more fact finding consistent with that approach.

Finally, the Court reversed the dismissal of MTPC’s fraud claim for further fact finding on whether MTPC’s injuries were separate and distinguishable from its contract damages and thus not inappropriately duplicative.

In the end, G4S failed to convince the Court to adopt its main argument, i.e., that its false payment certifications should not bar its right to recover on the contract. If there is a positive for G4S, it’s that it managed to resuscitate its quantum meruit claim and revive its chances of recovering some or all of the \$10 million in damages it alleges to have sustained (in addition to the \$4 million contract balance withheld by MTPC.) Whether that claim after further discovery will continue to have a pulse or be put to rest forever remains to be seen.

In the meantime, the lesson for contractors, particularly on public jobs, is not new. While the Court may have forged a new and more contractor-friendly path for the “strict compliance” doctrine, the essence of its decision can be found on the well-traveled roads of the Commonwealth’s jurisprudential past – namely, in the principle articulated by the late Justice Oliver Wendell Holmes almost 100 years ago: Contractors “must turn square corners when they deal with the Government.”