

Watch what you 'agree' to in fine print

■ *Keystone Masonry case gets moved from Pierce County to Spokane County because of a contract clause.*

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A recent case in the Washington State Court of Appeals once again reminds contractors about the importance of closely reviewing every word of a construction contract. In *Keystone Masonry v. Garco Construction*, the court moved a Pierce County contractor's lawsuit on a Pierce County project to Spokane County due to fine print in the contract.

Garco was general contractor on the construction of Bonney Lake High School in Pierce County and subcontracted with Keystone for masonry work. Keystone filed suit against both Garco and its bonding company (that issued the retainage bond) in Pierce County, where the project and the witnesses were located.

The subcontract, however, contained a forum selection clause which stated: "The site of any arbitration or venue of any lawsuit arising out of this Subcontract or the work hereunder shall be in SPOKANE County, WASHINGTON."

Because of this clause, the Court of Appeals sided with Garco and moved the case to Spokane, reasoning that "if the parties 'agree' to a venue for a suit, the trial court cannot allow the suit to be brought in any county other than the one agreed on by the parties." It is unknown whether Keystone ever noticed or paid attention to the venue clause in the subcontract, and yet by signing the subcontract Keystone was agreeing to litigate in Spokane.

Keystone argued that under the doctrine of forum non conveniens, the case should remain in Pierce County because the project itself and at least 19 witnesses were located in Pierce County.

Under this doctrine, if litigating in a certain county is unfairly inconvenient, the court will send the case to the county where the majority of the witnesses and evidence are located. Absent the forum selection clause in the subcontract, this argument would have almost assuredly kept the case in Pierce County.

In addition, Keystone cited state law which specifically requires that an action to foreclose against the retainage bond be brought in the county where the bond claim is filed, in this case Pierce County. The court was unimpressed by either argument, each of which would have likely been successful if the contract were silent as to the forum selection clause. But courts will almost always enforce contractual terms where both parties are experienced in contracting and have the opportunity to review the contract's terms before signing.

The court ruled that when the parties have "agreed" on a forum, the trial court must enforce the agreement unless enforcement would be unjust or was achieved through fraud. Whether Keystone realized that the subcontract even contained the requirement that litigation be asserted in Spokane was irrelevant. By having the opportunity to review the contract and ultimately signing it, Keystone effectively agreed to the term.

All too often, even experienced contractors and subcontractors exercise great deliberation and patience negotiating and reviewing major contract terms such as price, quantity or length of performance but ignore minor terms that can have a major effect.

Every word of a contract must be read carefully, even those terms that most people fail to notice. By neglecting to read even a single word, you might be unpleasantly surprised by what you have agreed to.

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