

Client's obligation to cooperate in construction contracts

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In *Buesco Construction Inc. v Hôpital Maisonneuve-Rosemont*, 2013 QCCS 3832 (currently under appeal), the Superior Court of Québec shed some light on a client's obligation to cooperate with the general contractor in the realization execution of a construction contract.

Context

At the end of fall 2002, pursuant to a call for tenders, Buesco Construction Inc. (Buesco) was awarded a contract to build the Hôpital Maisonneuve-Rosemont's (HMR) ambulatory center. While the work was in progress, HMR terminated the construction contract invoking serious infringements by Buesco, namely a failure to provide a baseline schedule of its activities, to comply with several health and safety standards on the construction site and to adequately set up an abutment system.

Subsequent to the termination of the contract, HMR sued Buesco for the costs necessary to complete the work. Buesco counterclaimed against HMR, arguing that the termination was both illegal and abusive. Buesco claimed an amount equivalent to the remainder of the contract, the lost profits and damages it allegedly suffered.

Buesco alleged that HMR was in default of its obligation to cooperate, which consisted of HMR making all necessary efforts to resolve the difficulties encountered in order to successfully complete the project. According to Buesco, this failure from HMR to cooperate has resulted in Buesco's situation with regards to the so-called "serious infringements", thus preventing HMR to invoke them.

Important Legal Principles

The contract studied in this case is a standard construction contract of enterprise where the parties' obligations are set out in the plans and specifications. Accordingly, these obligations and responsibilities are known prior to the execution of the contract. This contract involves an obligation of result on Buesco's part and a commitment from HMR to pay the agreed price on a specific schedule.

As for the obligation of cooperation, the Court declares that the contract does not explicitly create it. The Court further asserts that such an obligation of cooperation is rather to be found in contracts where the execution takes place over a long period of time or sequentially or where the parties stand together in a joint venture or at least share a common purpose.

In this case, the contract at issue had limited duration, was non-recurring and lacked any joint venture or common purpose element. Buesco was still free to choose the means to execute the contract and there has never been any interference from HMR in Buesco's choices. The Court emphasizes the importance not to get confused between the object of the contract and the common purpose of both parties. Here, the parties both wished the work (the object of the contract) entrusted to Buesco to be carried out, but that does not mean there was a joint venture or a shared common purpose.

Furthermore, the Court declares that it is not an easy task to impose any obligation of cooperation in a contract where the debtor is compelled to an obligation of result. It might be hard to reconcile the respective responsibilities of the client, the professionals, the general contractor and the sub-contractors who would all have cooperated together in order to resolve an encountered difficulty, in the event such cooperation failed. The obligation to cooperate does not allow the setting in advance of the scope of respective obligations. It might even create a complex entanglement which would make the

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DENTONS

obligations resulting from the contract unpredictable, which would be irreconcilable with the obligation of result imposed by the contract currently under discussion.

In light of the foregoing, the Court concludes that the contract did not impose any obligation of cooperation on HMR's part, which would have resulted in an obligation for HMR to make all the necessary efforts to carry out the project defined in the contract.

That being said, while the Court does not ascribe any obligation of cooperation to HMR, it nevertheless holds that HMR breached its duty to inform Buesco by failing to communicate several pieces of information in its possession and thus sides with Buesco in declaring that the termination was indeed abusive.

This decision, if upheld in appeal, might clarify the client's obligations and limit the scope of the general obligation of good faith between the parties to a construction contracts.