

THE SPEARIN DOCTRINE

The sleeping giant awakens in 2019. In this day and age of construction disciplines in the United States, hardly a day goes by where the Owner through its Architects and Engineers give construction specifications, plans, along with terms and conditions binding our modern day builders. The Spearin Doctrine was born 100 years ago in what is perhaps the most important construction case, *United States vs. Spearin*, 248 U.S. 132 (1918). Under Spearin, federal courts created a doctrine whereby an owner impliedly warrants the information, plans and specifications which an owner provides to a contractor to build projects. While originally a federal issue, the Spearin Doctrine has been applied by various states to projects.

In *Spearin*, the contractor contracted to build a dry-dock in the Brooklyn Navy Yard. In order to build the dry-dock in the site selected for it, the contractor had to relocate a portion of a sewer which ran through the specified site. The owner provided the plans and specifications containing the requirements for the section of sewer that was to be relocated. The contractor relocated the section of the sewer per the plans and specs and the owner approved and accepted the work. About a year after the sewer was relocated, a dam in a connecting sewer caused the sewer to flood and burst. As a result, the area excavated for the dry-dock flooded. The dam was not shown on the owner's plans and specifications. The Spearin Court held that the owner created an implied warranty that, if the contractor complied with the plans and specifications, the relocated sewer would be properly performed. The Court went on to hold that the general clauses requiring the contractor to examine the site and the plans and to maintain responsibility for the work until completion did not overcome the owner's implied warranty.

As noted above, over the years, the scope of the Spearin doctrine has been the subject of many important Federal and State legal decisions that define its use and application. Most states have adopted the Spearin either expressly or implicitly. The Spearin Doctrine has not been explicitly rejected by any State, however in 2007, Ohio came closest. In *Dugan & Meyers Construction Company v. Ohio Dept. of Administrative Services*, 864 N.E. 2d 68 (2007), the Ohio Supreme Court limited the applicability of the Spearin Doctrine to jobsite conditions such as ground conditions but refused to extend the Spearin Doctrine to delay damages resulting from design changes to inadequate plans and specifications. The Dugan court ruled that the express contractual "no damages for delay" provision prevailed and that "The Spearin Doctrine does not invalidate an express contractual provision."

Under the modern rule, Spearin cannot be invoked by a contractor if (1) the construction contract contains an enforceable avoidance clause; (2) the contractor did not reasonably rely on the defective plans and specifications; or (3) the defects in the plans and specifications were small and not sufficiently fundamental to the completion of the project. In understanding the Spearin Doctrine, it is important to note that express contract terms prevail over implied contract duties. Accordingly, owners can shift the

consequences of inadequate designs and plans to contractors and avoid liability for design defects with the use of a disclaimer, waiver, or other avoidance clause.

Another important limitation on a contractor's right to use Spearin is the requirement that a contractor reasonably rely on the owner's plans and specifications. It is unreasonable for a contractor to rely on an owner's plans and specifications if it has prior knowledge of the defects or it fails to properly comply with the plans and specifications. Also, a contractor cannot rely upon plans and specifications if the design defect is so "glaring or obvious" that an ordinary contractor would discover it during site inspection or in doing the contracted work.

Under Spearin, design defects must be fundamental to result in a breach of the implied warranty of the adequacy of the plans and specifications. Whether the plans and specifications contain a fundamental defect is typically determined by the result. In the case a contractor follows the owner's plans and specifications and the contract item is ultimately deficient, the the owner will in most cases be held not to have met its duty under the Doctrine. It should be noted that while it is true that Spearin protects contractors from the consequences of complying with defective plans and specifications, a contractor should be cognizant of the limitations of the doctrine, or it may ultimately be found responsible for the design defect.

The recent case of *Penzel Constr. Co. v. Jackson R-2 Sch. Dist.*, 544 S.W.3d 214 (2017) offers a view of the current trends using the Spearin Doctrine. Here the Spearin claims were implied warranties in government entity contracts. These claims were based on deficient plans and specifications in a construction project involving electrical issues. The Plaintiff was furnished plans and specifications that did not provide the contractor a road map for installing a component electrical system. Plaintiff did not need to show that the defendant's conduct fell below a reasonable standard of care to prevail on its Spearin claim. Interestingly, lay non expert testimony proffered by plaintiff provided a basis for a jury to conclude the plans were defective. In regards to proving damages, the court held that a widely used method to prove damages, the modified total cost method, could be used to calculate damages in Spearin claims with certain conditions such as adherence to Missouri's reasonable certainty requirement. Most importantly Plaintiff presented sufficient evidence to support a finding that the bid on the project's electrical work was reasonable, and there was sufficient evidence for a reasonable jury to determine damages.

Spearin is frequently used by contractors in construction defect litigation as an affirmative defense. As with any affirmative defense, the party asserting it bears the burden of proof. Specifically, the contractor must prove that there was a fundamental error in the plans or specifications and that error or omission was the proximate cause of the defective construction.

In sum, it is essential that construction contractors understand the impact of the Spearin Doctrine on their work. When a contractor follows the plans and specifications furnished

by the owner, and those plans are defective or insufficient, the contractor is not liable for any loss or damage result from the plans and specifications.