



SHEAR BULL



Palm Beach County Roofing & Sheet Metal Contractors Association

Affiliate of FRSA and NRCA

June 2014 Volume 27 - 6

June Program

Construction Liens and Payment Bonds

Bruce Loren Esq;
Loren Law Firm Attorney

June 25, 2014

6:00PM-7:00PM - Networking
6:30PM - Check-In
7:00PM - Dinner Meeting

Place: Holiday Inn
1301 Belvedere Rd (At I 95 Exit 69)
West Palm Beach, FL 33406
Contact: Ron Frano 655-5393
rfrano@pbcroofers.com

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THE IMPLIED WARRANTY OF CONSTRUCTABILITY

By Trent Cotney, Trent Cotney, P.A.

Generally, on construction projects, contractors provide an owner with a workmanship warranty. In addition, a contractor may supply the owner with manufacturer or material warranties after a project is completed. Although these types of warranties are provided by the contractor to the owner, the owner also provides certain warranties to the contractor during the course of construction. One such warranty is the implied warranty of constructability, also known as the implied warranty of fitness and plans or the Spearin Doctrine. This article will discuss the Spearin Doctrine and its applicability to construction projects.

Unless the contractor is engaged in a design build project, the contractor is normally provided with a set of plans, specifications and design documents from the owner. The design documents may either be generated by the owner or at the owner's request by an architect, engineer or other design professional. The Spearin Doctrine provides that the contractor is entitled to rely on the design documents provided by the owner. The contractor is bound to build the project according to the plans and specifications prepared by the owner or at the owner's request. Under these circumstances, the contractor is not responsible for the consequences of design defects.

An owner implicitly warrants that if

a contractor complies with the plans and specifications, which later prove to be defective, the contractor will not be liable to the owner for the loss or damage which results solely from the design deficiencies. In U.S. v. Spearin, 248 US 132 (1918), the United States Supreme Court articulated the implied warranty of constructability. In that case, the Court recognized to a certain extent the contractor is bound by the design provided to it on the project and that the contractor should not be liable for defects in that design. The Supreme Court also stated that the owner's duty to provide accurate plans and specifications is not overcome by provisions in the contract requiring the contractor to: (1) check plans; (2) visit the site; or (3) assume responsibility for the construction until the project is completed and accepted by the owner.

Many states have adopted the Spearin Doctrine and applied its reasoning to construction projects. However, not all states follow the Spearin Doctrine, but those that do often hold the owner liable for delay damages as a result of design deficiencies. If the design documents are faulty and unreasonably delay completion of a construction project, the owner may be in breach of contract entitling the contractor to additional compensation. See Philips and Jordan, v. Dept. of Transportation, 602 So.2d. 1310 (Fla. 1st DCA 1992).

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MESSAGE FROM THE PRESIDENT

The General Membership meeting last month was very informative. FRSA President, Rob Springer, gave us information about a new concept for the younger roofers in the association (30 & under) to express their views on where the industry should be going and how to move forward. He spoke about the upcoming convention, July 10th-12th, the affiliate competition as well as the "Spotlight Trophy for the Advancement of Roofing" (STAR Award).



Valerie Staggs, Brian Williams Agency, gave a great power point presentation on using social media in our business's. This explained all facets of the different types being used to promote our business's on Facebook, Twitter, Linked-In etc. that even an old guy like me could understand. I was surprised by the number of companies present that were using social media already and if you are not you need to contact Valerie and she will be able to help you.

OSHA is trying to change the way we report injuries to amend the current regulations and add requirements for electronic submission of injuries & illness information. For more information go to www.osha.gov/recordkeeping.

Next month's speaker is Bruce Loren, Loren Law Firm, who will speak about construction law, so make sure you bring all your questions for Bruce to address. Hope to see everyone there and remember to bring another member or contractor to our meeting.

Respectfully Submitted

Joe Byrne

President

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Continued...

The Spearin Doctrine is an important tool that can be utilized by a contractor to defeat alleged claims for defective construction. For example, an owner may claim that the contractor defectively constructed the roof of an office building. After forensic examination, it is determined that the design of the roof was faulty. Under those circumstances, assuming the state recognizes the Spearin Doctrine, the contractor would not be liable for structural deficiencies.

Contractual provisions in AIA documents and other construction contracts attempt to cut against the Spearin Doctrine, and courts may be less willing to look the other way when it comes to blatant design deficiencies. Therefore, the contractor should thoroughly examine all design documents prior to construction to determine their feasibility. During construction, if a design issue arises, the contractor should notify the architect/engineer and owner's representative of any design defect immediately. Many construction contracts allow for the request for information process (RFI) which allows contractors to request information and clarification on design-related issues from the architect or engineer of record.

By understanding and utilizing the Spearin Doctrine, contractors may be able to defeat owner claims related to

design deficiencies and preserve and prosecute claims for delay damages arising out of design defects.

Author's note: The information contained in this article is for general educational information only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation.

Trent Cotney is Florida Bar Certified in Construction Law, General Counsel and a director of the Florida Roofing Sheet Metal and Air-Conditioning Contractors Association (FRSA), and a member of the National Roofing Contractors Association (NRCA) and Palm Beach County Roofing & Sheet Metal Contractors' Association.

For more information, contact the author at 813-579-3278 or go to www.trentcotney.com.

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May 28, 2014 Meeting Photos



Standing left to right: Tim Viens, Gulf Coast Supply & Mfg; Danny Stokes, Past President; Mike Daley, Vice President; Joe Byrne, President

Seated: Rob Springer, FRSA President; Valerie Staggs, Ryan Williams Agency, Guest Speaker.



Rob Springer, FRSA President



Valerie Staggs, Speaker
Ryan Williams Agency



May Meeting



Joe Byrne, President

Additional photos on page 4 and the website!

May Meeting Photos

Continued...



View more
pictures
on our website!



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Industry Websites

- ASTM - www.guidance-inc.com/~roofroof/
- American Consulting Engineers Council - acec.org
- American Institute of Architects - aia.org
- American Society of Civil Engineers - asce.org
- Building Officials Association of Palm Beach County
- www.boapbc.org & www.boapbc.org/links
- Cedar Shake & Shingle Bureau
- www.CEDARBUREAU.org
- Construction Industry Management Council (CIMC)
- www.cimcpbc.com
- Construction Specifications Institute
- <http://www.csinet.org>
- Copper Development Association
- <http://www.copper.org>
- Division of Workers' Compensation
- <http://www.wc.les.state.fl.us./DWC/>
- Florida Roofing, Sheet Metal & Air Conditioning Contractors Association - www.Floridarroof.com
- Galvalume Sheet Producers - www.steelroofing.com
- National Roofing Contractors Association (NRCA) - <http://www.nrca.net>
- National Society of Professional Engineers - nspe.org
- Roofing Contractors Association of South Florida (RCASF) - www.rcasf.org
- Roofing Industry Education Institute- <http://members.aol.com/RIEIROOF/classes.htm>
- Roof Tile Institute - www.rooftile.org
- Sheet Membrane and Component Suppliers to the Commercial Roofing Industry (SPRI) - www.SPRI.org
- Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) - <http://www.smacna.org>
- The Council of American Building Officials (CABO) - <http://www.cabo.org>

From networking events, informative meetings, and website listings,

membership has it's benefits.

Invite your friends, colleagues and acquaintances to join.





July 2014

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
			CIMC 7:45 AM		Happy 4th of July!	
6	7	8	9	10	11	12
				FRSA CONVENTION		
13	14	15	16	17	18	19
			BCAB 2:00PM			
20	21	22	23	24	25	26
27	28	29	30	31		

HAMMERHEAD

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No July Meeting...

FRSA's 92nd Annual Convention and the Florida Roofing & Sheet Metal Expo
 "Developing Industry All-Stars"
July 10-12, 2014

Hyatt Regency Orlando & Orange County Convention Center, Orlando, FL

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