“NO LIABILITY” CLAUSE DOES NOT PRECLUDE RECOVERY FOR ADDITIONAL COSTS IN CONSTRUCTION CASE

June 12, 2012 | Law Alerts

Technology Construction, Inc. v. City of Kingman
Ct. Appeals, Div. One, June 12, 2012

Authored by the JSH Appellate Team

Plaintiff entered into a construction contract with the City. The City did not give Plaintiff notices to proceed with construction until after the date the projects were scheduled to begin under the contract. Plaintiff submitted a notice of claim to the City, claiming that the City’s delay caused increased costs and required changes in the work and adjustments to the contract. The City refused to pay.

Plaintiff sued for breach of contract and violation of the prompt payment act. The trial court entered judgment for Plaintiff. The City appealed, arguing that the “no liability clause” in the contract prevented Plaintiff from obtaining additional money in spite of the delay damages and changed conditions clauses in the contract. The City also argued that Plaintiff’s breach of contract claim consisted entirely of higher material costs which were not in the contemplation of the parties when they made the contract.

The court of appeals affirmed, holding that the “no liability clause” did not insulate the City from liability when the trial court had found the City responsible for significant delay. Interpreting the no liability clause to be limited to the original scope of work set forth in the bid documents gives meaning and effect to the other provisions of the contract providing for the payment of additional compensation for changed scope of work, delay, changes made by City and changed conditions. Similarly, the fact that the contract was a fixed price contract did not prevent judgment against the City for the increased costs and change orders. Plaintiff’s delay damages were foreseeable, therefore recoverable under A.R.S. § 34-221(F).