The Contract Matters When Navigating Notices to Cure

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Any time a contractor receives a notice to cure, it should tread carefully and review its contract to determine its response. Recently, the Georgia Court of Appeals evaluated a case in which the general contractor terminated the subcontractor’s contract for failure to provide adequate labor to the project. The court determined that the general contractor properly terminated the contract despite arguments from the subcontractor that the general contractor was the cause of the project delays (see High Tech Rail & Fence, LLC v. Cambridge Swinerton Builders, Inc., 871 S.E.2d 73 (Ga. Ct. App. 2022)).

In that case, the general contractor sent three different notices to cure to the subcontractor for its alleged inability to provide materials and complete the work on schedule. Upon receipt of the third notice to cure, the subcontractor did not send any laborers to the project for three days, resulting in the general contractor
terminating the subcontractor.

The court looked to the subcontract for guidance. Under the subcontract termination clause, the general contractor had the discretion to terminate the subcontractor if the subcontractor failed to meet the schedule or provide a sufficient amount of laborers. As it related to the general contractor’s discretion, the court concluded that although the general contractor must exercise its discretion in good faith, it could enforce the terms of the contract. The subcontract also included a provision that required the subcontractor to proceed with work even if there is a dispute between the parties.

The court held that given that it was undisputed that the subcontractor did not send workers to the project for three days, the general contractor had the right to terminate the subcontractor under the applicable subcontract provisions.

The moral of the story is that contractors need to make calculated decisions when issuing or responding to notices to cure. If you receive a notice to cure or are planning to send one, look to the contract for guidance. Additionally, you may want to contact legal counsel to assist you in navigating complicated contractual language to adequately preserve your rights.

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