

VERDICTS & SETTLEMENTS

Meaning of words 'for cause' critical to Broward schools settling with architect

Case: Zyscovich Inc. v. School Board of Broward County FL

Case no: CACE11010664

Description: Contract and indebtedness

Filing date: May 9, 2011

Settlement date: Sept. 19, 2012

Judge: Broward Circuit Judge Jeffrey Streitfeld

Plaintiff attorneys: Richard G. Daniels, Ari A. Sweetbaum, Daniels, Kashtan, Downs, Robertson & Magathan, Coral Gables

Defense attorney: Thomas C. Cooney, Broward County Public Schools

Settlement amount: \$1.18 million

Details: Zyscovich Architects, a firm with offices in Miami and West Palm Beach, had a role in four projects to put in additions, remodel or design new buildings for Broward County Public Schools. In the spring of 2010, the firm received notice the projects were being terminated. In total, the school board had about a dozen contracts at the time with six architectural firms and all were terminated.

Jose Murguido, a principle in the firm who was in charge of all educational projects, received letters pertaining to each of the four projects, advising the firm it was being terminated "for cause," explained Richarge G. Daniels, counsel to the firm.

Zyscovich had Daniels, who specializes in construction law, architect and engineering defense, attend the school board meeting at which a vote was to be taken to terminate.

Plaintiff case: Daniels appeared at the meeting to voice his concerns. There were architectural fees due and owed. In addition, and at a minimum, the school board owed

Zyscovich a termination fee equal to 5 percent of the architectural fee.

He asked the board what was meant in the letters by "for cause."

"It was kind of like a joke. They said the cause was 'cause we don't have the money,' " Daniels recalled. "It was only half-serious. They went to great lengths to make sure that it was strictly because they had no money, and yet it was still 'for cause.' "

However, terminating a contract for cause has a legal meaning whereby the school board is stating the contractor violated a term of the contract. It puts a burden on the contractor to prove otherwise, can involve penalties against the contractor, and the school board must state specifically what the violation is. Such a characterization, Zyscovich complained, could cause harm to its reputation.

Daniels had communications with the school board and its counsel for about a year, trying to resolve the dispute without filing a lawsuit, he said.

The school board insisted on mediation before discovery could begin.

"I think that based on what questions we were asking they were probably concerned with what we were going to get into," Daniels said. "So, they wanted mediation before we went on to the discovery process."

During the two years following the school board's vote to terminate the contracts, general counsel for the Broward public schools changed. Ed Marko retired and Thomas Cooney took over. The school board had been resisting a settlement up until Marko's retirement.



A.M. HOLT

Ari A. Sweetbaum and Richard G. Daniels argued that Zyscovich Architects' reputation would be harmed if its contract with Broward schools was terminated for cause.

"Upon his retirement, I believe they re-thought their position, and I think they really set out to do the right thing after that," Daniels said.

Defense case: Cooney, counsel for the school board, noted that Zyscovich sought damages of \$2.66 million. Of the almost \$1.18 million paid in the settlement, \$1.07 million was for architectural fees pursuant to terms of the contract.

He explained that state-imposed funding cuts precipitated the situation. The "for cause" language on the votes to terminate design contracts was strictly based on the unforeseen actions of the Legislature to cut the capital fund and unprecedented decreases in property values that resulted in the elimination of \$1.8 billion from the school district's available capital outlay funds.

"The court ultimately ruled that notwithstanding the state's ac-

tion ... the 'termination for cause' provision of the design contracts are inapplicable to Zyscovich projects. The court ruled that such terminations are deemed to be 'terminations for convenience,'" Cooney noted in an email response.

Outcome: The case settled early in the litigation process. There were no depositions taken, and no other discovery of documents, Daniels said. Following the school board's approval of the settlement, the case was dismissed by Circuit Judge Jeffrey Streitfeld on Sept. 19.

Comments: "The settlement covered 100 percent of the fees that they were owed. It covered 100 percent of the termination fees due. It covered the interest on those fees," Daniels said.

— Adolfo Pesquera