

Connecticut Appellate Court Recognizes Cardinal Change Doctrine for the First Time

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Changes are made to scopes of work on construction projects every day. In some cases, the contract party being asked to accept these changes is reluctant to do so, and views the changes to be so substantial as to result in a scope of work radically and materially different than what it originally agreed to perform. Faced with these circumstances, the decision to refuse to perform the extra work and walk away from the project can be a tempting one.

The “cardinal change doctrine” is a tool available to address these situations – the doctrine provides that, when changes are made to a contract which are so disproportionate to the original scope of a contractor’s work that they constitute an abandonment of the original agreement by the other party, the contractor is relieved of further performance obligations.

Taking advantage of a cardinal change argument is often simpler in theory than in practice – existing case law applying the doctrine is scarce in many jurisdictions (it originated at the federal level), and the case law that does exist sets a high bar for a determination that a given change or set of changes is a *cardinal* change. Tasked with undertaking this analysis, courts will examine whether the scope of work at issue has deviated so far from what was agreed upon as to constitute something entirely, radically different. This high bar, coupled with common contract provisions permitting one of the contracting parties to control the schedule and impose scope adjustments on the other party, and other provisions requiring contractors to work through claims and disputes, make the decision to walk away from a project while claiming a cardinal change has occurred a difficult, and risky, one. If the aggrieved contractor is ultimately found to have stopped work without sufficient cause, it is now deemed to have breached its agreement and can be exposed to significant damages for the counterparty’s completion costs and other damages flowing from the breach.

This was the difficult decision faced by Semac Electric Company, Inc. on a construction project at Stamford Hospital in 2015. After a series of sequencing and schedule changes that it viewed as unreasonably altering its scope of work and increasing its costs, Semac notified its prime contractor, Skanska USA Building, Inc., that, unless its contract price was adjusted as requested, it would “be excused from further performance and cease work” due to what it saw as cardinal changes to its work. Skanska disagreed, terminated Semac’s contract the next day claiming breach by abandonment, and the parties took their competing claims of breach to court. After receiving extensive testimony and determining that Semac’s claim did not “meet contemporary views in

commercial cases of what is a radical or cardinal change,” the trial court found in favor of Skanska on the cardinal change issue, and Semac appealed.

After observing that Connecticut case law had previously “not addressed an issue of cardinal change per se,” the Appellate Court surveyed the fact-specific analyses employed by other jurisdictions and the contract, applied these factors in analyzing Semac’s cardinal change claim, and agreed with the trial court that Semac’s claim failed, and it had breached its contract by walking off the job. [Semac Electric Co. v. Skanska USA Building, Inc.](#), 195 Conn. App. 695 (2020). Luckily for Semac, the Appellate Court also affirmed the trial court’s determination that Skanska had breached the contract by failing to provide the full notice to cure period before termination, and barred Skanska from recovering on its completion cost claim (ultimately, the Appellate Court affirmed a net judgment from Semac to Skanska due to certain billing irregularities and overpayment prior to the dispute arising).

While there are a number of lessons to be learned from this case, perhaps the most significant is that, had it not been for Skanska’s improper termination of the contract, Semac would have been on the hook for Skanska’s eight figure completion cost claim because the Court didn’t find that the circumstances constituted a cardinal change. With the benefit of perfect hindsight, it’s clear that Semac’s claim of a cardinal change wasn’t sufficiently supported by the facts. Yet, as most contractors can attest, things are never so clear-cut during the pendency of a project.

As this decision demonstrates, the cardinal change doctrine remains a viable defense to unknown and unplanned risks involved with significant, forced scope changes. However, this case makes clear that it can be difficult to prevail on a cardinal change argument and that a careful, detailed legal and factual analysis is needed prior to deciding to “pull the trigger” and walk off of a job due to a claim that a cardinal change has occurred.

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