



Is the Spearin Doctrine Dead in Ohio or Just Wounded?

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All architects should be familiar with the Spearin Doctrine. The Spearin Doctrine was established by United States Supreme Court in 1918. In a case called *United States v. Spearin*, the Supreme Court affirmed and awarded damages to a contractor to compensate it for delays experienced during the construction of a dry-dock at the Brooklyn Navy Yard in New York City. The particular location of the proposed dry-dock required that the contractor complete the diversion and relocation of a section of a sewer that intersected the site chosen for the dry-dock. The plans and specifications prepared by the government prescribed separate requirements for the sewer diversion and relocation in addition to the requirements for construction of the dry-dock itself.

Although the contractor performed the work in accordance with the plans, the sewer broke in several places and flooded the excavation of the dry-dock. It was eventually determined that the breaks occurred because internal pressure had built-up as a result of heavy rains being diverted to the sewer by a dam that was not included on the plans or specifications. This dam, however, was part of the same city sewer district to which the relocated sewer belonged. The dry-dock work was eventually completed more than 15 months late and only after the government owner radically changed and enlarged the plans and specifications. The use of an intersecting sewer was discontinued and the reconstruction modified the sewer in its size, shape and material to eliminate the possibility of bursting under internal pressure.

The United States Supreme Court held that if a contractor is bound to build according to plans and specifications prepared by the owner, the contractor is not responsible for the consequences of defects in the plans and specifications. Further, the liability of the owner is not overcome by contract clauses requiring builders to visit the site, check plans and inform themselves of the requirements of the work. The Court relied on the fact that the plans contained precise requirements for the character, dimensions and location of the sewer, the successful diversion and relocation of which was vital to the construction of the dry-dock. Many in the construction industry believe that the Spearin Doctrine was the law of the land in Franklin County until July 28, 2005 when the Franklin County of Appeals issued its decision *Dugan and Meyers Construction Co. v. Ohio Department of Administrative Services*.

The *Dugan and Meyers* case involved the construction of several buildings that made up Phase II of the Fisher College of Business at Ohio State University. Construction delays were sustained by the contractor on the project. For many reasons, the architect responded to a substantial amount of RFIs, field work orders and issued architectural supplemental instructions. Although the facts of the *Dugan and Meyers* case are unique to that case, *Dugan and Meyers* eventually submitted an Article 8 claim to the State for additional compensation, which was rejected. The case was tried in the Court of Claims for almost one month commencing February 10, 2003. Several months later, the court awarded Dugan and Meyers over \$2 million constituting the balance of the contract, elimination of back charges assessed by the owner, delay damages and the Court eliminated liquidated damages that the owner had assessed against Dugan and Meyers.

The Court of Appeals reviewed this matter and on July 28, 2005, modified the Court of Claims decision. The Franklin County Court of Appeals determined that *Spearin* does not stand for the proposition that owners, by virtue of having furnished plans and specifications, warrant the plans and specifications against any problem, need for clarification, minor deficiency or subsequent deviation. The court appears to have held that plans and specifications must be almost unbuildable or otherwise wholly inadequate to accomplish the

purpose of a contract before a contractor is entitled to additional compensation based solely upon reliance on the adequacy and accuracy of the plans and specifications. The Court of Appeals distinguished this circumstance from other cases in which it has followed the Spearin Doctrine and relied upon that part of the *Spearin* case that held a contractor is not excused or entitled to additional compensation simply because unforeseen difficulties are encountered during performance of the contract.

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