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CONTRACTS - FLORIDA

School Bd. of Broward County v. Pierce Goodwin Alexander & Linville

District Court of Appeal of Florida, Fourth District - March 19, 2014 - So.3d - 2014 WL 1031461

School board contracted with an architectural firm to perform design services for the renovation of a high school. After construction was completed, the school board sued the architect, contending that numerous "change order items" (COIs) were a breach of the contract to provide design services. The COIs were generated due to changes in the initial design plans to meet building code requirements after construction commenced.

The thrust of the school board's suit was that the architect did not provide initial design plans for bidding by contractors that were code-compliant. One of the issues raised pretrial was the standard of care applicable to the contract between the parties. The school board contended that the standard of care was whether the initial plans were code-compliant as required by the contract (breach of contract standard). The architect contended that the standard of care was whether it performed its duties with ordinary and reasonable skill (negligence standard). The circuit court agreed with the architect.

The appeals court agreed with the school board that the circuit court's erroneous interpretation of the contract resulted in the jury being instructed on an erroneous standard of care, and the circuit court improperly limiting expert testimony to a negligence standard of care. It thus reversed for a new trial as to the largest of the COIs.

As to certain of the COIs to which the architect admitted liability, the appeals court held that damages collected by the school board for the COIs should not include costs for construction that the school board would have incurred if the initial design plans matched the final design plans. This was referred to by the parties as "first cost."