

# **Bond Case Briefs**

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## **CONTRACTS - CONNECTICUT**

### **Old Colony Const., LLC v. Town of Southington**

**Supreme Court of Connecticut - April 21, 2015 - A.3d - 2015 WL 1612044**

Contractor brought breach of contract action against town, and town counterclaimed for liquidated damages for breach of contract. The Superior Court denied town's motion for summary judgment. Following a bench trial, the Superior Court rendered judgment in favor of contractor on its breach of contract claim and in favor of town on its counterclaim. Contractor appealed.

The Supreme Court of Connecticut held that:

- In an apparent matter of first impression, town's election to terminate the contract for convenience did not preclude it from recovering liquidated damages;
- Liquidated damages clause in construction contract was not unenforceable on the basis certain misinformation by town contributed to some of the delays in completing the project;
- Town was not required to prove that it had suffered damages based on contractor's delay in order to recover under the contract for liquidated damages; and
- Town's approval of change orders did not constitute a modification of public works construction contract that would entitle contractor to equitable adjustment in time or costs due to delays beyond its control.

In the absence of any express limitation on the reservation of rights in termination for convenience clause of public works construction contract, town was not barred from seeking liquidated damages or other default based remedies after exercising its right to terminate the contract under the termination for convenience provision, even if it could be implied that a limitation existed with regard to damages incurred following the termination. Town's claim for liquidated damages would not be impaired because its rights to such damages arose as soon as the substantial completion date passed, and continued to accrue until termination of the contract.