

DWK Obtains Summary Judgment Against General Contractor's \$25 Million Construction Claim Against School District

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Earlier this month, Dannis Woliver Kelley successfully defeated a general contractor's \$25 million claim against a school district client on summary judgment in Superior Court. The Court ruled the fifteen lease-leaseback contracts on fifteen separate projects did not comply with the California Education Code or the then effective Division of the State Architect ("DSA") requirement for prior approval of construction documents. The Order's impact is to invalidate the Contractor's claims and potentially subject it to disgorging the \$84 million the District paid on the void contracts. Given the stakes, the Contractor is expected to appeal. Notwithstanding, the Order represents a major District victory and serves as a reminder that the Education Code imposes stringent requirements with which all parties must comply when performing work on California school district construction projects. A copy of the Court's Order can be found [here](#).

The Contractor's claims arose out of lease-leaseback projects on fifteen District campuses. The Contractor sued the District for breach of contract and recovery of statutory late payment penalties, valuing its claims at over \$25 million. The District counter claimed for defective work, delayed and incomplete work, and for violation of the statutory requirements applicable to lease-leaseback contracting.

Eventually, DWK moved for summary judgment of the Contractor's entire lawsuit on three primary grounds—each of which the Superior Court adopted in its 24-page Order.

First, the District argued that the lease-leaseback contracts were void because they were never formally approved by the District's governing board, as the Education Code requires. The Court agreed that any action falling short of the Board's contract approval by formal motion does not satisfy the Education Code's strict requirements. The Court also agreed that school districts may not constructively or impliedly ratify contracts after the fact, meaning that Board-approved change orders or price increases on the projects did not substitute for express ratification by formal vote.

Second, the Court adopted the District's argument that the same fifteen lease-leaseback contracts were void because the contracts were executed before DSA approved the plans and specifications, as required by the then effective Education Code. The Court rejected the



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Contractor's position that DSA approval before payment for construction was sufficient. The Court again noted the Education Code's stringent statutory requirements, which expressly required DSA approval before school construction contracts were executed. The Court further noted the Contractor's hardship claims in not receiving further payment were irrelevant to the Court's analysis under the Education Code's stringent requirements and applicable case law.

Third, the District argued the Contractor's claims on nine of the alleged contracts were untimely, either because the Contractor failed to present its Government Code claim to the District within the required time, or because the Contractor failed to file its lawsuit within the required time. Again, the Court agreed with the District and rejected the Contractor's argument that non-physical-construction events between the parties following project completion extended the statute of limitations periods.

While the case will continue in the Superior Court, and the Order may be the subject of an eventual appeal, the Superior Court's ruling completely disposes of the Contractor's claims against the District at this stage of the litigation.

If you need help managing claims and litigation on your construction projects, we invite you to contact a DWK Attorney in our Construction Law Group.

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