

Owner of Public Works Project Can Withdraw Retention Funds From Escrow Account Without Judicial Resolution of Dispute

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A public works project owner may contract for the right to unilaterally find a contractor in default, and has the right to withdraw retention funds held in escrow prior to judicial resolution of the parties' dispute based on the language in the escrow agreement, if any. See *Pittsburg Unified School District v. S.J. Amoroso Construction Co., Inc.* (Dec. 22, 2014, A138825) __ Cal.App.4th __ [14 C.D.O.S. 14222].

Background

In 2008, Pittsburg Unified School District (District) contracted with S.J. Amoroso Construction Co., Inc. (Amoroso) to modernize Pittsburg High School. The parties also entered into an escrow agreement, pursuant to Public Contract Code section 22300, agreeing to deposit the retention in an escrow account. The escrow agreement gave the District the right to withdraw retention funds held in the event Amoroso defaulted on the construction contract "as determined solely by" the District.

In 2010, disputes between the parties began to arise. After Amoroso failed to complete the project, the District terminated Amoroso, filed suit, and hired a replacement contractor to complete the work while litigation with Amoroso was pending. The District also sought to withdraw \$3.5 million from the escrow account to pay for completion, which Amoroso contested by requesting a preliminary injunction from the court.

Decision

The trial court denied Amoroso's request for a preliminary injunction. The Court of Appeal affirmed, holding that Amoroso was not entitled to a preliminary injunction enjoining the District's withdrawal of funds because the purpose of a project owner's retention is to encourage the contractor to complete the work in a timely and competent manner, and to protect the owner against the risk of having to hire a replacement contractor to repair or complete the defective work. Requiring an owner to await judicial resolution of the parties' dispute would deny the owner the funds to complete its project until long after the project's intended completion date, and would thereby undermine the entire purpose of retention.



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Impact

The decision reaffirms the advice that we have given clients over the years based on prior case law: a public project owner has a right to withdraw retention funds held in escrow, pursuant to Public Contract Code section 22300 and the escrow agreement, without having to wait until after its dispute with the contractor is resolved in court.

PRACTICE AREAS

- Construction
- Business and Property