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Recent Louisiana Case Reminds of the Need for Careful Contract Drafting to Avoid Conflicts

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On June 29, 2023, the United States District Court for the Western District of Louisiana issued a Memorandum Ruling in *Arcadis U.S., Inc. v. Stryker Demolition & Environmental Services, LLC*, 2023 WL 4280924 (W.D. La. 6/29/23) that reminds us of the importance of careful contract drafting and "order of precedence" provisions to avoid conflicts between contract template forms and other incorporated documents, including careful attention to the provisions that address any potential contract ambiguities.

Specifically, the case addressed a conflict between the completion date shown on a subcontractor's schedule and the completion date listed in the subcontract, with the Court ultimately deciding that the latter governed. In reaching that decision, the Court found that the parties' agreement that the contract would not be interpreted against either party was insufficient to "contract away" Civil Code article 2056, which provides that ambiguities should be interpreted against the drafter of any contractual text at issue. Instead, the Court held Civil Code article 2056 governs unless both parties drafted the text at issue. Therefore, even if the contracting parties agree otherwise, the Court found that conflicts are interpreted against the party who provides the contract template unless the contract provides that, or there is evidence that, both parties drafted the contract.

Arcadis U.S., Inc. (Arcadis) contracted with Ansell Healthcare Products, LLC (Ansell) regarding the demolition and disposal of lead and asbestos roofing materials at Ansell's former battery manufacturing facility. *Id.* at *1. Arcadis agreed to subcontract the demolition and removal work and provide project management. *Id.*

Stryker Demolition & Environmental Services, LLC (Stryker) submitted a proposal to Arcadis for the removal and demolition work. *Id.* As required by Arcadis' request for proposals, Stryker included in its proposal a schedule detailing the planned start and duration dates of the project's major tasks that included 101 workdays of on-site activities. *Id.* Stryker later revised its proposal schedule to include 111 workdays, or approximately 22 weeks (ultimately yielding a June 3, 2019, completion date). *Id.* at *3.

Arcadis and Stryker entered into an "Agreement for Subcontractor Services" on what was essentially a "fill in the blank" Arcadis' subcontract template. *Id.* at *2. The subcontract included a "Required Completion Date" of December 31, 2019, a date significantly later than the June 2019 date in Stryker's schedule. *Id.*

Disputes arose between Arcadis and Stryker regarding extra work claims by Stryker and delay claims by Arcadis. *Id.* at *3. Arcadis sought delay damages from Stryker because Stryker completed its work on July 26, 2019, and not by June 3, 2019, the date set forth on the latest schedule Stryker submitted to Arcadis shortly after they signed the subcontract. *Id.* at *5. Stryker contended that it completed its work on time and before the December 31, 2019, Required Completion Date in the parties' Agreement. *Id.*

In support of its position that the completion date in Stryker's schedule governed, Arcadis relied on the subcontract's site condition provisions that required Stryker to "adhere to, commence and complete its work in accordance with any schedule incorporated into this Contract, or any schedule submitted" and the subcontract's provision regarding delay damages, which provided:

In the event the SUBCONTRACTOR fails to achieve Substantial Completion of the Work within the Contract Time or fails to meet any other time requirement or the time limit set forth in the Contract, after due allowance for any extension or extensions of time made in accordance with the provisions herein set forth, the SUBCONTRACTOR shall be liable for damages incurred by Arcadis as the result of SUBCONTRACTOR'S performance failures.

Id. However, the subcontract did not define "Substantial Completion or the Work within the Contract Time," and Arcadis' witnesses could not define the terms. *Id.*

Stryker pointed to the express December 31, 2019, Required Completion Date of the Agreement and contended that, even if the court found an ambiguity, the court should construe that ambiguity against Arcadis because the subcontract was on Arcadis' form. *Id.* at *6. The court agreed. *Id.* at *6-*7.

The court also rejected Arcadis' argument that the contract precluded interpreting ambiguities against Arcadis because the subcontract provided that "the parties represent and warrant that each has had the opportunity to review and negotiate the terms of this Agreement, with the benefit of counsel if desired, and agree that any ambiguity shall not be construed against the drafter." *Id.* at *6. The court ruled that under Civil Code article 2056, "[i]n case of doubt that cannot be otherwise resolved, a provision in a contract must be interpreted against the party who furnished its text," and "[a] contract executed in a standard form of one party must be interpreted, in case of doubt, in favor of the other party." *Id.* The court further ruled that the parties could not "contract away" Civil Code article 2056 where there was no joint drafting of the contract at issue. *Id.* Therefore, because the subcontract did not provide the parties jointly drafted the subcontract, and because neither party presented evidence that both parties jointly drafted the subcontract, the court interpreted any ambiguities regarding Stryker's completion date against Arcadis. *Id.* at *6-*7.

Thus, while incorporation of multiple contract documents and schedules into a contract is commonplace, the *Arcadis* case reminds us that careful drafting and clear "order of precedence" provisions are critical. And the case also reminds us that, even if the parties agree the contract should not be construed against the drafter, the court might not enforce that agreement over the Civil Code's contract interpretation principles if the parties did not jointly draft the contract.

If you have any questions regarding this ruling or would like guidance on contract drafting, please reach out to [Mark W. Frilot](#), [David Kurtz](#), or any member of Baker Donelson's [Construction Group](#).