Construction law

Performance of construction contract

- Construction contract is a bilateral contract
  - Project owner=== paying the price
  - Contractor === to produce a new result and deliver the same
- But, the project owner is not required to pay the price until the work is completed and delivered to it
- So when do we say the work is completed or the contractor performed the contract?

Contd...

- Strict performance
- Quantum merit
- Substantial performance
- Now a days substantial performance is preferred over others.
- It says the contractor should be paid if he, in good faith, completed the substantial part.
- Some unintentional defects are tolerable. The damages is recoverable.

Assignment and subcontracting

- 3201-3205 and 3293-3296 Assignment of
- Subcontracting (3204-3206)
- Subcontracting is common in construction contract.
- Tasks like plastering, excavating, bricklaying, joinery, paving, painting, stone masonry, carpentry, plumbing and etc. re preferably done by subcontractors

Approval

- Subcontracting requires approval of the administrative body.
- Appointing subcontractor without such approval is a ground for cancellation
- Approval does not set the main contractor free from liability arising from the conduct of the subcontractor unless it is due to the delay in performance

Acceptance of the work

- Two levels of acceptances

1. Provisional acceptance 3274-78

- Joint ascertainment of the works made immediately after the completion of the work
- Marks the beginning of period of warranty
- Shifts the burden of remedying damages related with force majeure to the owner

Contd...

2**. final acceptance:**

- Ends the period of warranty
- Entitles the contractor to the payment of all balances including the money retained in the form of guaranty or security
- The contractor will be however obliged to guarantee until 10 years if the defect was not apparent during the final acceptance article 3282

Guarantees in construction contract

- There are a number of security devices that are used to reduce risk of the project owner

1. Contract security (performance bond)
2. Bid bond
3. Advance payment Guarantees
4. Retention money bonds
5. Maintenance or defects liability bonds

1. Contract security/performance bond

- A sum of money the contractor deposits to the project owner to guarantee the performance of the contract in accordance with the terms and conditions
- It is deposited after the contractor won the bid
- 1o% of the total price of the contract
- But, if the actual damage the owner sustained is greater than the performance bond, it can claim for additional compensation

Bid bond or security deposit

- Is a bid bond or security deposit given by a contractor to the project owner to guarantee entry into a contract if the contract is awarded to that contractor
- If the bidder withdraws his bid before the expiry of the time limit, or refused to enter in to the contract after winning the bid, the bid bond will be forfeited.

Advance payment guarantee bond

- Its is a security the contractor should produce to guarantee the advance payment it received from the project owner.
- Read article 3271

Retention money bonds

- The public procurement directive allows the client to retain/withhold 5% of each payment made to the contractor
- It is done as a security for the quality of the construction work
- It is retained over and above the performance bond
- 50% of the money will be released on provisional acceptance
- The remaining 50% will be released after the one year period of warranty following the provisional acceptance

Maintenance or defects liability bonds

- The one year period warranty the contractor gives to the client
- It starts upon the provisional acceptance

Question

- Is there any type of security given by the client to the contractor?
- Legal mortgage article 3067

Variation

- The need for variation may arise because of d/t factors
- ✓ Clients may change their mind
- ✓ Designers may not have finished all of the designs
- ✓ Changes in the legislation and other external factors
- ❖ So how can the contract be varied?

contd

- For civil contract : 3031-3034
- For government construction contract: 3283-3285

- The client can request for alterations of modification
- The contractor should accept it
- If the alteration reduces or increases the expense of the contractor?
- The contractor can refuse the request if the proposed alteration affets the total plan