

THE FLORIDA BAR CONSTRUCTION LAW COMMITTEE
CONSTRUCTION TRANSACTIONS SUBCOMMITTEE
Annotated Construction Contract Provisions Update - 2019

1	INDEMNIFICATION • <u>Section 725.06, Florida Statutes</u> Entire provision is not void and unenforceable under statute if the indemnitor is required to indemnify its indemnitor for “claims, damages, losses, and expenses or causes of action [that] are caused in part by those indemnified hereunder...” The appellate court reasoned that the only portion of the provision that violated the statute was the portion requiring the subcontractor to indemnify the general contractor for its own negligence even if only a portion of the loss was caused by the general contractor. The entire indemnity provision was not void and unenforceable. ---<i>CB Contractors, LLC v. Allens Steel Products, Inc.</i>, ___ So. 3d ___ (Fla. 5th DCA 2018)
2	MISCELLANEOUS PROVISIONS • <u>Third Party Beneficiary</u> Contract expressly barred any third party beneficiaries. Therefore, the architect could not be a third party beneficiary of the contract between the Owner and Architect. ---<i>Perez-Gurri Corp. v McLeod</i>, 238 So. 3d 347 (Fla. 3rd DCA 2017) • <u>Third Party Beneficiary – Owner direct right to sue subcontractor</u> Insurer had duty to defend subcontractor under general liability policy and could not rely upon exclusions from coverage to avoid the duty given the general contractor’s allegations in the complaint against its subcontractor. --- <i>Southern Owners Ins. Co. v. Gallo Building Serv., Inc. v. KB Home Tampa, et al.</i>, _____ F.Supp. _____ Case No. 8:15-cv-01440-EAK-AAS (U.S.Dist. Ct Middle District, Dec. 18, 2018) • <u>Flow down</u> Subcontract expressly incorporated prime agreement terms into the subcontract. However, the indemnification obligation was limited to subcontractor, not its subcontractors by the express terms of the indemnity provision. --- <i>Blok Builders, LLC v Katryniok</i>, — So. 3rd — (Fla. 4th DCA 2018)
3	TERMINATION OR SUSPENSION OF THE CONTRACT • Performance of condition (failure of) Real estate contract required performance of funding before transfer of property was to occur as conditions of closing. ---<i>Univ. Housing by Dayco Corp v. Foch</i>, 221 So. 3d 701 (Fla. 3rd DCA 2017)

4	CLAIMS AND DISPUTE RESOLUTION <u>No damages for delay</u> A contract waiver of damages (“no-damages-for-delay” provision) did not bar the contractor’s right of action for delay damages against the architect <i>Perez-Gurri Corp. v McLeod</i>, 238 So. 3d 347 (Fla. 3rd DCA 2017) • <u>Mutual waiver of consequential damages</u> Damages for cost to repair hangars, taxiways, and subgrade under concrete and asphalt surfaces. Trial and appellate courts held that such damages were not recoverable as such damages were characterized as consequential damages and, as such, were barred by virtue of the waiver of consequential damages contained in the contract between the Engineer and the Owner. First District Court of Appeal certified question to the Florida Supreme Court: Where a contract expressly requires a party to inspect, monitor, and observe construction work and to determine the suitability of materials used in the construction, but the party fails to do so and inferior materials are used, are the costs to repair damage caused by the use of the improper materials general, special, or consequential damages? <i>Keystone Airpark Authority v Pipeline Contractors, Inc.</i>, 266 So.3d 1219 (Fla. 1st DCA 2019)

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