

ALL ACCORDING TO PLAN

Exact measurements go a long way 2024.4

In December 2013, a contractor agreed to replace four bridges for the Vermont Agency of Transportation (VTrans). Three bridges were timely completed. The fourth bridge involved the construction of a single-span steel girder bridge over the White River in Rochester, Vermont. One abutment was to be placed on a deep pile foundation while the other was planned to be placed on ledge/bedrock.

The contractor conducted some exploratory drilling and discovered the elevation of the ledge was much lower than shown on the plans. The contractor claimed this was a differing site condition that required significant changes. *Schultz Construction, Inc. v. Vermont Agency of Transportation*, 209 Vt. 146 (2018).

To prove a differing site condition, the contractor had to show that: (i) the conditions shown in or represented by the contract differed materially from the actual conditions, (ii) the actual conditions were reasonably unforeseeable based on all information available at bid time, (iii) the contractor reasonably interpreted and relied upon such information, and (iv) the contractor was damaged thereby.

VTrans determined there were only two representations in the plans as to the ledge elevation. One plan sheet indicated the existing ledge was “approximately” 802 feet. Another plan sheet was a conceptual drawing and “not to scale,” so it was unreliable from which to determine ledge elevations. Additionally, VTrans argued the soil borings nearest the expected ledge showed substantial slopes, from which the contractor could not have reasonably expected to use the ledge for placement of the footings. From this VTrans concluded there were no representations as to what the contractor should have expected and/or the contractor’s interpretation was unreasonable in light of such uncertainty.

The contractor appealed to the Transportation Board. The Board rejected VTrans’ determination and found four plan sheets depicted elevations drawn to scale and used the general symbol for exposed ledge. The Board also noted that the bid documents described that the footings for the prior bridge were situated directly on ledge, so the replacement bridges could be similarly situated. Moreover, the contractor offered significant testimony from its own experienced principal and its consulting engineer. From this, the Board concluded there were at least five, separate contract representations supporting the contractor’s reasonable interpretation.

Nevertheless, VTrans appealed the Board’s decision to the Vermont Supreme Court. The Court reiterated that the contractor need not have had the only reasonable interpretation. Both VTrans’ and the contractor’s interpretations could be reasonable and, if all other elements are met, then a claim for differing site conditions could still survive, as it did here. Among other arguments, VTrans contended that the representation of the elevation as “approximate” was enough to make any inferences therefrom unreasonable. The Court rightfully held that a reasonable interpretation cannot be solely dependent upon a single statement. Rather, a reasonable interpretation must be based upon the contract as a whole and complete document. Together, the bid information supported the contractor’s reasonable interpretation and expectation that the ledge was situated to support the footings for the new bridge.

VTrans also argued that specific plan notes were more important over general depictions of ledge. Notably, the Court did not address the often-cited maxim of contract interpretation that specific representations control over generalities. Instead, the Court simply determined the contractor’s interpretation of the general representations was reasonable. Had this or other facts been found in VTrans’ favor, the outcome could have been quite the opposite.

In a claim for differing site conditions, the element of reasonably interpreting contract representations is a very fact-specific issue in each case requiring careful attention to detail. When each party can have a reasonable interpretation, a fact (or a few) one way or the other can control the entire outcome. Had the facts been more one-sided, this dispute likely would not have progressed thru so many levels and to the highest court of the State.

