

Lessons from the Icon Brickell Pool Deck Litigation

What Florida Associations, Boards, and Contractors Should Take Away

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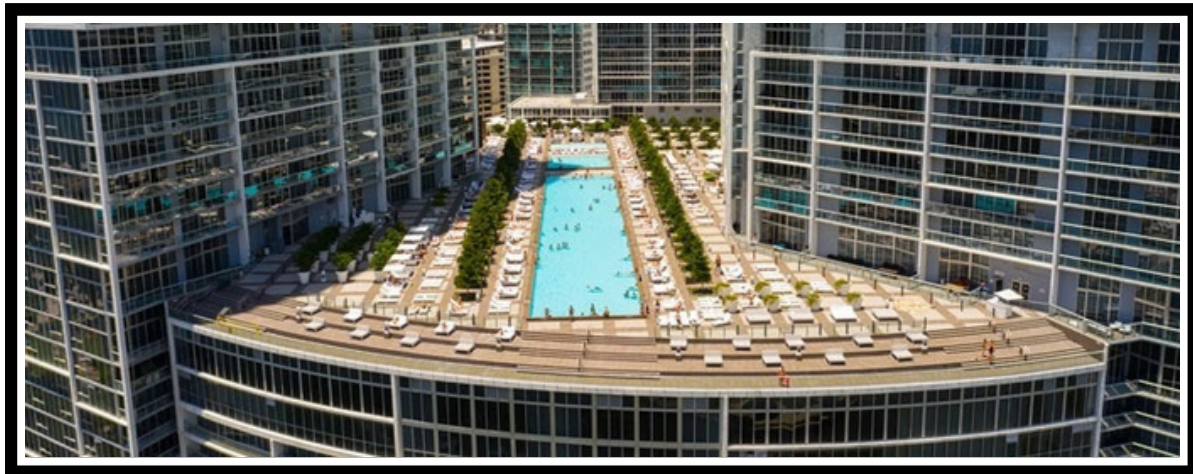


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For Florida condominium associations, especially high-rise communities managing major repair or remediation work, a construction project is also an exercise in risk management, documentation, oversight, and contract enforcement.

That reality is at the center of the ongoing litigation involving Icon Brickell Master Association and its pool deck reconstruction project. The case arose from a large-scale remediation project at Icon Brickell's elevated recreation deck in Miami. The association hired a general contractor to reconstruct the pool deck, including installation of a new tile and waterproofing system. After problems developed, the association pursued claims arising from allegedly defective and nonconforming work.

Recently the court entered a significant partial summary judgment ruling in favor of the association on its breach of contract claim against the general contractor, Complete Property Services Inc. The court found that CPS breached its construction contract with the association, though the ruling addressed liability only. The court did not determine the amount of damages, and that remains an issue for trial.

Still, the ruling offers several important lessons for Florida condominium associations, boards, contractors, and developers.

The Contract Matters, and Courts Will Enforce It

One of the most important aspects of the ruling is also one of the simplest: the written contract controlled.

The contract required the general contractor to perform the work in accordance with the contract documents, applicable law, the Florida Building Code, and manufacturer specifications. The court found that CPS failed to comply with manufacturer specifications related to components of the pool deck system, including the Jamo Floor Mud and RedGard waterproofing membrane.

For associations, this is a reminder that contract language is not boilerplate. Clear requirements concerning specifications, manufacturer instructions, warranty obligations, timing, supervision, and responsibility for subcontractors can make an enormous difference if a dispute later arises.

For contractors, the lesson is just as direct: If the contract incorporates manufacturer specifications or project submittals, those requirements are not optional.

A General Contractor Remains Responsible For Its Subcontractors

Many construction disputes involve work performed by subcontractors. That was true here as well. The pool deck system was installed through subcontractors, and the general contractor brought third-party claims against those subcontractors.

But as between the association and the general contractor, the contract placed responsibility on the general contractor for the work. The court found that CPS was responsible for the acts and omissions of its subcontractors and for ensuring the work complied with the contract requirements.

That point is critical for boards. Associations typically contract with a general contractor because they are relying on that contractor to manage, coordinate, supervise, and deliver the project. The board should not be left chasing every trade contractor if the work fails. A well-drafted construction contract should make clear that the general contractor remains responsible for the overall work, including subcontractor work.

Contractors should likewise understand that subcontracting work does not subcontract away accountability to the owner. If a subcontractor's work does not comply with the contract, the general contractor may still face direct liability to the association while separately pursuing claims against the subcontractor.

Manufacturer Specifications Should Be Collected, Approved, and Preserved

One of the key issues in the Icon Brickell ruling involved manufacturer specifications for the materials used in the tile and waterproofing system. The court relied on the project submittals and specifications in determining that the work did not comply with applicable requirements.

That is a practical lesson for every association undertaking major work. Boards and their managers should insist that all product data, installation instructions, technical data sheets, shop drawings, submittals, approvals, and revisions be collected and preserved in an organized project file.

If a dispute arises years later, those documents may become the roadmap for proving what was required, what was approved, and whether the work complied.

Warranty Obligations Need To Be Tracked Closely

The court also found that CPS failed to complete warranty repair obligations. This is another common problem for associations. A contractor may return to perform warranty work for some period of time, but intermittent repair efforts do not necessarily mean the contractor has fully satisfied its warranty obligations.

Boards should maintain a warranty log that identifies each reported condition, when it was reported, who inspected it, what repair was promised, when work was performed, whether the repair was accepted, and whether the problem recurred.

Too often associations rely on informal emails, phone calls, or walk-throughs. Those may be helpful, but they are no substitute for a clear written record.

Time Provisions Are Not Just Aspirational

The contract at issue included timing requirements, and the court found that CPS failed to timely complete the project. In condominium communities delays can create serious operational and financial consequences. Amenities may be unavailable, residents may be disrupted, and the association may incur additional costs.

Boards should ensure that construction contracts include realistic deadlines, clear substantial completion requirements, liquidated damages where appropriate, and procedures for documenting delays. Contractors and developers should be equally careful to document approved extensions, owner-caused delays, weather delays, and change-order impacts.

What Boards Can Do Before Problems Arise

The biggest takeaway for associations is that protection starts before the first day of work. Boards should work with experienced counsel and consultants to make sure the contract clearly defines the scope of work, applicable specifications, warranty obligations, responsibility for subcontractors, payment procedures, insurance requirements, schedule, closeout documents, and dispute procedures.

During the project, boards should insist on regular written reports, organized project documentation, photo records, meeting minutes, and prompt written notice of deficiencies. If problems develop, the association should avoid delay. Early investigation and documentation often determine whether claims can be proven later.

Lessons For Contractors and Developers

The ruling also carries lessons for contractors and developers. Project documentation matters. Compliance with approved submittals, manufacturer specifications, and contract documents should be documented in real time. Contractors should not assume that owner representatives, consultants, or manufacturer representatives will insulate them from their own contractual obligations.

When issues arise, contractors should respond clearly, document their position, and complete agreed warranty work. Unfinished repairs and unresolved punch-list or warranty items can later become central evidence in a breach-of-contract claim.

The Broader Message

The Icon Brickell ruling does not determine the final amount of damages, and that issue remains for trial, but the liability ruling is significant. It reinforces a basic but important principle: When a Florida condominium association enters into a construction contract, the contractor's obligations are enforceable.

For condominium boards the case is a reminder that major construction projects require strong contracts, careful oversight, good records, and timely enforcement. For contractors and developers it is a reminder that contractual specifications, manufacturer requirements, schedules, and warranties are not technicalities. They are the rules of the project.



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