

INCORPORATING ONE AGREEMENT INTO ANOTHER

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It is not unusual to have a contract between parties where one contract incorporates the terms of another contract or document. You often times see this in the construction industry. For example a general contractor will enter into a subcontract agreement with a subcontractor. In the subcontract agreement, the prime contract between owner and general contractor will be referred to in the subcontract agreement where the prime contract is incorporated into the subcontract agreement. A recent appellate court case addressed this issue and found that if you are going to incorporate one agreement into another agreement, the reference must be clear and unequivocal.

The facts of the recent appellate court case found that Oldcastle a manufacture entered into a dealer agreement with All Masonry & Landscape Supply (Masonry). The date of the dealer agreement was 2001. In 2010, Masonry updated its credit information with Oldcastle. The 2010 credit application contained a clause stating that the 2010 document constituted the entire agreement between the parties. In other words, the 2001 agreement was not only not incorporated into the 2010 agreement but was not even referenced. Masonry later sued Oldcastle for breach of the 2001 agreement. Oldcastle was the prevailing party in the lawsuit and subsequently filed a motion to recover attorney fees pursuant to the 2010 agreement, which contained an attorney's fees clause. The trial court granted Oldcastle's motion for attorney's fees and Masonry appealed claiming that the 2010 document has no bearing on the 2001 agreement.

Despite the trial court's ruling that Oldcastle is entitled to attorney's fees, the Appellate Court reversed the trial court's ruling. The Appellate Court stated that for the terms of one document to be incorporated into another document, the reference must be clear and unequivocal. In these set of facts, the court concluded that the two agreements did not show any type of intention to be incorporated into each other and since the lawsuit was based upon the 2001 agreement which did not contain an attorney's fees clause, Oldcastle as the prevailing party was not entitled to recover attorney's fees.

The lesson learned from this case is that if you intend to incorporate one or more documents into another document, your reference to incorporating documents must be clear and unequivocal. Failure to do so may preclude you from being able to take the benefits from an older agreement into your new agreement.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman: (818)

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