

Satisfaction Clauses: Do They Really Mean What They Say?

By Sean Thompson and John Klotsche

Many public and private construction contracts contain a so-called “satisfaction clause.” The clause may read something like this: “Contractor will perform the work pursuant to the plans and specifications and to the Owner’s satisfaction.” Does this mean what it says? Does this mean that the owner can reject the contractor’s work if the owner is subjectively dissatisfied with it?

Like all contracts, construction contracts must be interpreted in a way that gives effect to the mutual intention of the parties as it existed at the time the contract was executed. CIV. CODE §§ 1635, 1636. Moreover, the mutual intention of the parties is determined by objectively analyzing the language used in the contract and, in some circumstances, extrinsic evidence. CIV. CODE §1635, *et seq.*; *Winograd v. American Broadcasting Company*, 68 Cal.App.4th 624, 632 (1998). Consequently, when asked to interpret the meaning of a satisfaction clause in a construction contract, courts will employ these fundamental principles of contract interpretation and assign whatever meaning the owner and contractor appear to have intended. *Kurland v. United States Pacific Insurance Company*, 251 Cal.App.2d 112, 115-116, 118 (1967).

Since the turn of the twentieth century, California courts have consistently refused to construe satisfaction clauses as giving owners free rein to reject a contractor’s work merely because the owner is subjectively dissatisfied with that work. Instead, such clauses are usually interpreted to require only that the contractor’s work conform to the contract documents in a manner that would be “satisfactory to a reasonable person.” *Gladding, McBean & Company v. Montgomery*, 20 Cal.App.276, 279 (1912); *Tiffany v. Pacific Sewer Pipe Company*, 180 Cal.App. 700, 702 (1919); *Bruner v. Hegyi*, 42 Cal.App. 97, 99 (1919); *Thomas Haverty Co. v. Jones*, 185 Cal. 285, 296 (1921); *Fielding & Shepley, Inc. v. R.H. Dow*, 72 Cal.App.2d 18 (1945); *Kurland v. United States Pacific Insurance Company*, 251 Cal.App.2d 112 (1967). As discussed below, the rationale for this rule centers on the nature of construction contracts and the fact that contractors usually are required to build the project according to the design provided to the owner.

In *Tiffany*, 180 Cal.App. at 702, the California Supreme Court explained that “where the subject matter of the contract involves personal taste or feeling, as where an artist agrees to paint a portrait of another or some member of his family, to the satisfaction of such other or the like” the general rule is that “the party to be satisfied is the judge of his own satisfaction.” *Id.* at 703. However, “[a] different rule applies where the contract provides for the construction of a building or the like, in accordance with plans and specifications fixed by the contract, to the satisfaction of the owner or of an architect employed by him. In these cases it is usually held that if the contract is performed as required by the plans and specifications, the person whose judgment is invoked must accept the performance and his mental

condition as to satisfaction is immaterial.” *Id.* at 702 (Emphasis added). In short, when a construction contract contains strict guidelines that regulate how the contractor’s work must be performed (e.g., plans and specifications), courts infer that the owner and contractor intended a satisfaction clause to mean simply that the contractor’s work must conform to those guidelines in the eyes of a reasonable person, regardless of the owner’s subjective opinion of the work.

A case that exemplifies this rule is *Bruner*, 42 Cal.App. at 99, where a contractor entered into a contract with an owner to install tile. The contract stated that the contractor’s “work must be satisfactory to the owner.” *Id.* The contractor installed the tile; however, “through no defect in workmanship or material, but probably because, as was intimated by one of the witnesses, the building contracted and expanded, the tile cracked.” *Id.* The owner argued that, because the tile was cracked, it was not installed to its satisfaction as required by the contract. *Id.* at 99. The *Bruner* court disagreed and held that because “the work contracted for goes into a building, the fruits of the labor of the contractor being retained by the owner, the rule is that a stipulation in the contract to perform to the satisfaction of the owner calls for only such performance as is satisfactory to a reasonable person. It is sufficient if the contractor completes his work in accordance with the contract in such a manner that the owner, as a reasonable man, ought to be satisfied with it.” Consequently, the *Bruner* court affirmed the trial court’s ruling that the work was satisfactorily performed, and gave the following explanation:

The [cracking] of the tile on the job was not caused by any defects in the material or by any fault in workmanship; and that, though the work was not performed to defendant’s satisfaction, it nevertheless was performed ‘reasonably satisfactorily,’ and was ‘a satisfactory piece of work.’

Id.

Another relevant opinion is provided in *Fielding & Shepley, Inc.*, 72 Cal.App.2d at 18, where a subcontractor was hired to pour concrete for a general contractor on a government project. The contract contained a provision that said the “work should be done to the satisfaction of the [general contractor].” *Id.* at 21. After the work was complete, the concrete contained defects that were caused by factors beyond the subcontractor’s control. *Id.* at 19-22. The government penalized the general contractor for the defective work. In turn, the general contractor tried to hold the subcontractor liable for that penalty by arguing the work was not done to its satisfaction because the finished product contained defects. *Id.* at 21-22. In light of the fact that the defects were not related to the subcontractor’s workmanship, the *Fielding* court considered the general contractor’s argument to be “untenable” and held that the work was “performed in such a manner that it would be satisfactory to a reasonable person.” *Id.* at 21.

Perhaps the leading case on this issue is *Kurland*, 251 Cal.App.2d at 112, where a contractor was hired to construct an air conditioning unit in accordance with the owner's plans and specifications. The contract required the contractor to "guarantee that the equipment installed shall satisfactorily cool and heat the building in accordance with the standard design temperatures." *Id.* at 118 (Emphasis added). The contractor completed the air conditioning unit in accordance with the plans and specifications; however, due to errors in those plans and specifications, the unit did not meet the temperature standards. The owner argued that, because the contractor guaranteed the unit would meet satisfactory temperature standards, the contractor was liable for the cost to repair the air conditioning unit to ensure it reached a satisfactory temperature. The *Kurland* court disagreed and held:

We construe the 'guarantee' as being an undertaking on the part of the subcontractor not that the system as designed was adequate to produce the results desired by the owners but that the subcontractor's work pursuant to the plans and specifications would be done as effectively as possible to achieve those desired results.

It would not be reasonable to construe the language of 'guarantee' as being sufficiently broad to constitute a basis for a transfer to the subcontractor of responsibility for defective plans and specifications procured by the owners.

Id. at 118-119.

The rule that owners and contractors can take away from the above-mentioned cases is that the party seeking to subjectively enforce a satisfaction clause must explicitly make it clear in the contract that the clause will be interpreted subjectively. Thus, as in the cases mentioned above, an owner cannot, on the one hand, require the contractor to comply with plans and specifications and, on the other hand, require the contractor to meet the owner's subjective expectations for the work. If, however, the language of the contract is drafted such that it is made clear that, notwithstanding the contractor's compliance with the plans and specifications, the owner may subjectively reject the work, courts may honor that intent pursuant to the general principle that the parties are free to draft their own contracts.¹

¹ It should be noted that it will be more difficult to subjectively enforce a satisfaction clause in a California public construction contract because of rules, both statutory and common law, requiring the public owner to take responsibility for the accuracy of the design of the project. For example, Public Contract Code section 1104 requires a local public entity to provide complete and accurate plans and specifications and prohibits the public owner from taking responsibility for the same. Therefore, a public owner would have difficulty enforcing a satisfaction clause to reject work if the contractor's work complied with the design provided by the owner.