

Louisiana

Case Law

1. **Public works:** In *The Ramelli Group LLC v. The City of New Orleans*, 997 So.2d 612 (La App 4 Cir 2008), the court held that on Public Works, parties who feel their bid was not accepted in violation of Title 38 can seek injunctive relief to enjoin the award of the contract pursuant to §38:2220(B). The plaintiff sought injunctive relief 8 months after a public contract was awarded. The 4th Circuit held that while the statute didn't have a specific prescriptive period for authorized injunctive actions, it could be "gleaned" from the statute and jurisprudence that "timely" injunctive life must be sought. By failing to seek the injunctive immediately, the plaintiff waived its right to enjoin the award of the contract.

2. **Prevailing Building Codes:** In *Bonvillain Builders LLC et al v. Charon E. Gentile, M.D.*, (La. 1 Cir 2009), No. 2008-CA-1994, 2009 La. App. LEXIS 1855, the Louisiana 1st Circuit considered circumstances where a general contractor bid a project without accounting for the design and installation of a drainage system, which was required by code for commercial buildings. The general contractor desired a change order for the drainage system, which it argued was a "hidden condition." After testimony, the trial court held the drainage system was "an unforeseen item," but the 1st Circuit reversed calling the trial court's holding legal error. The general contractor had an obligation to construct according to prevailing laws and codes, and his ignorance of the applicable code did not render his neglect a "hidden condition."

3. **Arbitration:** In *Graves, et al. v. BP America, Inc., et al*, U.S. 5th Circuit Court of Appeals, May 6, 2009, No. 08-40575, the Fifth Circuit held that non-signatory survivors were bound by an arbitration agreement between the decedent and his employer, because under Louisiana contract theory, the nonsignatory plaintiffs "stand in the decedent's legal shoes." While not a construction law case per se, the holding will apply in construction cases where Louisiana contract theories (such as piercing the corporate veil) will extend to require nonsignatories to arbitration agreements to arbitrate notwithstanding.

Legislation

1. **Act 467** of 2009 Legislative Session, Rep. Ponti and Sen. Thompson, amends La R.S. 47:6030(A) and (B)(2) relative to individual and corporate income tax credits available for installation of wind or solar energy systems. The amendment limit each system to one total tax credit, but broadens who is allowed to claim the credit. Previously, only the resident of the property could claim the tax credit, but under the amended statute, any taxpayer who installs and owns the system itself can claim the credit. This provides installation companies the opportunity to lease the solar equipment to homeowners, and claim the tax credits directly.

2. **Act 348**, Rep. Gautreaux, La. R.S. 33:130.790–130.793. Authorizes local government subdivisions to create "sustainable energy financing districts" to incur debt and issue funds to property owners in the district for use on solar and energy efficiency projects. Property owners can repay the loans over a twenty-year period, and through their payment of annual property taxes.

3. Act 520, Rep. Leger, La. R.S. 47:6035. This is a tax credit system for green industries similar to tax credits offered to filmmakers in Louisiana. It provides a tiered system offering 10% - 25% tax credit against start-up costs and payroll of new green businesses in the state. Green jobs and industries include, but are not limited to, “renewable energy services,” and “green building and construction.”

4. Act 156 of the 2009 Legislative Session amended La. R.S. 37:2160(C) and 2162(I), and enacted 37:2158(E) and 2160(D), all providing increased criminal and civil penalties for engaging in the business of contracting without authority. The legislation also provided that any collected finds should be remitted to the contractor’s educational trust fund of §37:2162(J).

5. Act 725 of the 2008 Legislative Session became law on January 1, 2009, providing significant changes for licensing of electrical and mechanical contractors. Previously, “electrical or mechanical” contractors only required a license when the project cost exceeded \$50,000. Act 725, however, lowers this threshold to just \$10,000.

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