

Construction Law in North Carolina

Melissa Dewey Brumback
2840 Plaza Place, Suite 400
Raleigh, NC 27612

Phone: (919) 881-2214
Fax: (919) 783-8991
Email: mbrumback@rl-law.com
Website: constructionlawNC.com

Why Misery Loves Company (aka Concurrent delay on the Construction Project) (law note)

June 30, 2011 by Melissa Brumback

You know the old saying, "[Misery loves company?](#)" It's true. Even in the construction world.



What happens if, while the design team is asleep at the switch, the contractor is also delaying the project, or the owner is dithering about a materials selection? Since there was more than one cause of the project delay, does that let you off the hook? Maybe so.

The above scenario is, in its bare-bones basics, an example of concurrent delay.

What is concurrent delay? Concurrent delay is delay to the critical path of construction, caused at the same time by multiple events not exclusively within the control of one party. In other words, it is when two or more parties both contribute to the delay of the project.

In such a case, neither may recover damage from each other, unless there is proof of clear apportionment of the delay and expenses. See [Biemann & Rowell Co. v. Donohoe Cos.](#), 147 N.C. App. 239, 245, 556 S.E.2d 1, 5 (2001).

Construction Law in North Carolina

Melissa Dewey Brumback
2840 Plaza Place, Suite 400
Raleigh, NC 27612

Phone: (919) 881-2214
Fax: (919) 783-8991
Email: mbrumback@rl-law.com
Website: constructionlawNC.com

Where both parties contribute to the delay, **neither can recover damages**, unless there is proof of clear apportionment of the delay and the expense attributable to each party. In such an instance, the only remedy for both parties may be an extension of time to the contract.

Have you experienced a case where concurrent delays existed on a Project? Were you able to apportion the delay damages, or did all the culpable parties pay the price? Share below.

Also, please sign up for email delivery of blog posts directly to your inbox!

Photo: [Misery](#) by Molly Helzschlag via Creative Commons license.

This document is intended for general informational purposes only and does not provide any legal advice nor create any attorney-client relationship.

Statutes and case law vary from jurisdiction to jurisdiction. Information presented here may not be applicable to any individual situation. You should consult a licensed attorney in your jurisdiction for legal advice relating to your specific situation.

The opinions expressed herein are those of the author and not of Ragsdale Liggett PLLC.

All material in this blog copyright 2009-2011.