

Did the 4th Circuit “Tarnish” Sustainable Construction in the CBF Case?

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About a week ago, [the 4th Circuit Court of Appeals reversed and remanded](#) the Chesapeake Bay Foundation’s “parallam” lawsuit. Since that unpublished ruling on procedural grounds, much discussion has ensued. One particularly interesting headline, found at the well respected Greed Building Law Update, states [Litigation Over First Ever LEED Platinum Building Tarnishes Green Building](#). After describing the reversal, the GBLU post then states its opinion that architects and engineers will avoid the use of new untested products that may not do the job required of them when designing buildings. From this premise, the author wistfully discusses the fact that this could cause an issue with “green” building.



Does this case actually “tarnish” sustainable building, or does it just “tarnish” the use of materials that may not last over the long haul, “green” or

otherwise? Is it the fact that these materials are considered sustainable or the fact that they simply failed and were the wrong choice of material that the parties will be arguing about on remand? I believe it’s more the latter than the former.

I have [discussed the issues with the headlong charge](#) toward the use of new materials and building methods in the name of sustainable building on occasion here at Musings. Also, and as pointed out in the comments to my post last Monday, this case is more about the use of inappropriate materials that failed at their intended purpose regardless of the label placed on those materials. Even among the subset of “sustainable” materials, designers have options and should be aware of the potential issues with the materials that they specify.

Like those at GBLU, and as [a construction attorney](#) interested in seeing construction flourish, I hope that this case does not “tarnish” sustainable construction in a way that slows the careful adoption of new and “green” means and methods of building. However, I don’t believe that this particular case will do much in the way of slowing this progress.

Agree? Disagree? Think I’m nuts? I’d love to hear from you.

As always, I welcome your comments below. Please [subscribe](#) to keep up with this and other Construction Law Musings.

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