



**Supreme Court
Commonwealth of the Northern Mariana Islands**

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PRESS RELEASE

On Thursday, December 31st, the Supreme Court in a unanimous decision affirmed in part, reversed in part, and remanded to the Superior Court the lawsuit between Tano Group, Inc. (Tano) and the Department of Public Works (DPW). The lawsuit stemmed from the 4.8 million dollar contract between DPW and Tano for the construction of Southern High School. Tano was supposed to complete the school's construction by the start of the 2001 school year, but instead it was completed a year late. The parties blamed each other for delays and other problems that occurred during the course of construction. DPW did not complain about the quality of the work.

By November 2002, Tano sought the final payment due under the contract which amounted to \$367,919.85 and other sums for standby costs and necessary work that exceeded the scope of the contract. DPW also failed to release Tano's construction bonds, which prevented it from getting similar work. The parties held several meetings over the next two years in an attempt to resolve their differences but to no avail.

In early 2005 both parties requested that the Director of Procurement (Director) hear the dispute and render a decision. The Director refused involvement and Tano subsequently filed a lawsuit in Superior Court. In response, DPW argued that the court should not hear the case because the Director had not rendered a decision as required by law. The Superior Court agreed and ordered that the Director hear Tano's grievances. In June 2005 the Director issued a decision, and Tano filed suit seeking review of the decision by the trial court. The trial court heard the entire case and both parties appeal to the Supreme Court.

The Supreme Court found that the Superior Court properly exercised jurisdiction over the entire dispute. The Supreme Court also upheld the trial court's decision regarding which damages to award and which damages not to award with respect to the breaches of contract and breaches of the implied covenant of good faith and fair dealing claims. The Supreme Court, however, found that the trial court applied the wrong interest rate to

Tano's damages, and that it had improperly placed the burden of proof on Tano regarding the reasonableness of its mitigation efforts.

The full opinion of this complex construction litigation case is *Tano Group, Inc. v. Department of Public Works, et al.*, 2009 MP __, and can be found at the CNMI Judiciary's web site under "News Archives" on the Home page. (http://www.justice.gov.mp/news_archive.aspx)

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