



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**RY-TAN CONSTRUCTION, INC. v. WASHINGTON ELEMENTARY  
SCHOOL DISTRICT, 1 CA-CV 03-0248 (Opinion);  
CV-04-0300-PR**

**Parties:** The Washington Elementary School District No. 6 and The Governing Board of the Washington Elementary School District are the Petitioners. Ry-Tan Construction, Inc. is the respondent. The City of Phoenix and the League of Arizona Cities and Towns have appeared as amici curiae.

**Counsel:** The Washington Elementary School District No. 6 and The Governing Board of the Washington Elementary School District are represented by David B. Earl and David J. Cantelme of Jennings, Strouss & Salmon. Ry-Tan Construction, Inc. is represented by Francis J. Slavin and Ellen B. Davis. The amici are represented by Brad Holm of Holm, Wright, Hyde & Hays.

**FACTS:**

In 1999, the Governing Board of the Washington Elementary School District solicited bids for the construction of new classrooms. Ry-Tan was the lowest qualified bidder, and the project architect recommended that Ry-Tan be awarded the contract.

On March 1, 1999, representatives from the District expressed concerns to Ry-Tan that, in 1995, in connection with a previous contract, Ry-Tan prematurely had started construction before asbestos removal by another contractor. As a result, the District had been cited and fined. District representatives discussed with Ry-Tan the importance of not commencing work before being authorized to do so. Ry-Tan's president signed an acknowledgement that Ry-Tan would "take all steps necessary to ensure that this type of situation does not occur again." The Board then voted to award Ry-Tan the contract.

The District arranged a meeting with Ry-Tan for March 12, 1999 at 3:00 p.m., at which time Ry-Tan was to present its performance and payment bonds and liability insurance certificates, the parties were to execute the formal contract, and the District was to give Ry-Tan a Notice to Proceed.

On March 11, 1999, Ry-Tan brought equipment onto the District's property and began work the following morning. Ry-Tan was ordered to cease work, and a District manager informed Ry-Tan at the 3:00 p.m. meeting that he was going to recommend that the Board cancel the award. The District refused to sign the formal contract, and the Board subsequently voted to cancel Ry-Tan's award and re-bid the job.

Ry-Tan subsequently filed suit alleging that a binding and enforceable contract had been created when the Board voted to approve its bid. Prior to submission of the case to the jury, the court ruled, as a matter of law, that a contract had been formed when the Board voted to accept Ry-Tan's bid. The court also ruled, as a matter of law, that Petitioners' defenses that Ry-Tan had failed to

comply with the claims statute at A.R.S. 12-821.01, and that the contract had a “termination for convenience” clause, were inapplicable. Finally, the trial court ruled that the Arizona education procurement rules applied to this dispute.

A jury returned a verdict in favor of Ry-Tan and awarded it \$320,200 in damages. Petitioners appealed. The appeals court affirmed in part and vacated in part. This court granted the petition for review.

**ISSUES:**

1. Whether a school district is bound by acceptance of a bid prior to execution of a written contract.

2. Whether a school district can raise a constructive termination for convenience defense only if there is a material change in circumstances.

3. Whether a contractor is excused from compliance with the claims statute by the Procurement Code and/or a response opposing injunctive relief on grounds that an adequate remedy at law exists.

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