Client Alert: Ruberto, Israel & Weiner Construction Law Group Wins $5 million Judgment for its Client Under Massachusetts Prompt Payment Law

By RIW on December 14, 2020



RIW **Construction Law** attorneys **Bradley Croft**, **Kirk McCormick** and Roger Smerage secured summary judgment for RIW's client under a seldom-used law known as the Massachusetts Prompt Payment Act.

In a case of first impression in Massachusetts, the superior court granted summary judgment in favor of RIW's client, a general contractor, in a dispute arising over a commercial construction project in Boston. The Court ordered the defendant, a real estate developer, to pay over $5 million based on its failure to reject the contractor's payment applications in accordance with the requirements of the law. **See Mass Lawyers Weekly story here**.

Passed in 2010, the Prompt Payment Act applies only to commercial construction projects with a base contract value of over $3 million. The law requires the owners of such projects to timely review and process contractor invoices or risk waiving the right to challenge them after the statutory response period lapses. The law also requires the owner to specify its factual and contractual reasons for rejecting a payment application and to certify such reasons as made in good faith. If the owner fails to do so, the Act provides that such requisitions are "deemed approved."

Although the Prompt Payment Act's requirements have been generally recognized throughout the construction industry on applicable projects, until now it was unclear what role a violation might play in a contractor's lawsuit to collect payments. Prior to this decision, there had been no Massachusetts state court decisions enforcing its terms.

In this case, the general contractor did not receive full payment on its final seven payment applications amounting to nearly $5 million, and alleged that the owner violated the Act by failing to reject such applications within the time-frame and in the format required by the law. The general contractor filed suit in February 2019 alleging the owner breached its contract by failing to make these payments. The general contractor then filed a motion for summary judgment in August 2020 based on the Prompt Payment Act, arguing that the owner's failure to act consistent with the statute's requirements constituted a breach of contract as a matter of law, rendering all of the subject payments due.

In its opposition to the motion, the owner argued that payment was not required based on its counterclaims of defective workmanship and a series of emails it alleged constituted sufficient "rejection" to meet the requirements of the statute. The owner also argued that a violation of the Prompt Payment Act standing alone does not constitute a breach of contract and that, even if there was a violation, the owner's other defenses to a breach of contract claim must still be considered at trial.

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The Court rejected the owner's arguments and entered a final judgment in favor of the contractor in the amount of $5.5 million. In doing so, the Court held: "The Act required [the owner] to state 'the factual and contractual basis for the rejection… certified in good faith' within the time limits set by it. Consistent with the Act, [the owner] was free to raise any factual or contractual basis for rejecting the Requisitions in whole or in part, but failed to do so in compliance with it. Because that is so, whatever objections [the owner] may have had under the Contract to the requisitions were waived."

The Court also entered the judgment as "a separate and final judgment," which means that it takes effect immediately notwithstanding the pendency of several remaining claims in the case. Although such judgments are rare, the Court determined that the Prompt Payment Act "demands prompt payment" and that there was "no just reason for delay in issuing a separate and final judgment" on the requisitions.

The decision helps to clarify the practical impact of this law. The Prompt Payment Act applies to both change order requests as well as contractor and subcontractor payment applications. Owners and contractors alike must pay close attention to its strict requirements and either timely object with specific reasons or else be ready to process payments so funds can flow downstream to the contractor and subcontractors. Attention must be paid not only to the timeliness of any rejection, but also to identifying the specific factual and contractual basis supporting it.

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