RIW Alert: RIW Construction Group Wins Appeal Under Massachusetts Prompt Payment Act

By Bradley L. Croft on June 7, 2022



In a highly anticipated decision, the Massachusetts Appeals Court **affirmed a $5 million judgment** in favor of RIW's general contractor client under a seldom-used law known as the Massachusetts Prompt Payment Act.

In November 2020, RIW construction law attorneys **Bradley Croft**, **Kirk McCormick**, and **Roger Smerage** secured summary judgment in Suffolk Superior Court in favor of their client in a case of first impression in Massachusetts. The Prompt Payment Act applies to certain types of construction contracts and imposes specific required payment timeframes and procedures which must be followed to reject a payment application. The Superior Court held that the owner's failure to follow those requirements on this project resulted in a waiver of its contractual defenses to payment and ordered immediate payment of over $5 million to RIW's client.

In affirming the Superior Court's decision, the Appeals Court held: "The point of the legislation is that these payments may not be withheld, even on valid grounds that they are not due because of a breach of contract, unless a timely rejection is made in compliance with the statute."

Passed in 2010, the Prompt Payment Act, MGL Chapter 149, §29E, applies to construction projects with a base contract value of over $3 million, except for projects that contain four or less dwelling units. The law requires the owners of such projects to review and process contractor invoices within the time periods and in the format required by the statute or risk waiving the right to challenge them after the statutory response period lapses. The law 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" and must be paid.

Although the Prompt Payment Act's requirements have been generally recognized throughout the Massachusetts construction industry, 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.

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