

The Payment-First Rule After Cannistraro: What the SJC's Latest Prompt Payment Act Decision Actually Means

By Bradley L. Croft on July 1, 2026



Last week's much anticipated Massachusetts Supreme Judicial Court decision in *J.C. Cannistraro, LLC v. Columbia Construction Co.* failed to deliver the clarity sought by the construction industry with respect to MGL c. 149, §29E, the Massachusetts Prompt Payment Act. While those ardent defenders of the sanctity of arbitration may have found solace in the SJC's allegiance to the right of arbitrators to make mistakes, those seeking guidance on the precise requirements necessary to comply with the Prompt Payment Act were largely left with the same questions they had following the prior decisions in *Tocci Building Corp. v. IRIV Partners, LLC*, 101 Mass. App. Ct. 133 (2022), and *Business Interiors Floor Covering Business Trust v. Graycor Construction Co.*, 494 Mass. 216 (2024). [A full text of the Cannistraro opinion can be found here.](#)

Specifically: *when exactly does a contractor have to pay a deemed-approved payment application in order to preserve its right to assert defenses and/or counterclaims against the subcontractor?*

Graycor established that a contractor facing deemed-approved invoices does not permanently forfeit its substantive defenses, but it imposed a strict condition: payment must occur *prior to, or contemporaneous with*, the assertion of those defenses. The rule is not merely about sequencing as a formal matter. It reflects a deliberate policy judgment that the Prompt Payment Act's deemed-approval mechanism must carry *meaningful* consequences. A contractor cannot sit on unpaid deemed-approved invoices while simultaneously litigating its obligation to pay them.

Payment Comes First; Argument follows.

In *Cannistraro*, Columbia did not come close to satisfying that requirement as *Graycor* framed it. Columbia filed its original answer in the Superior Court asserting affirmative defenses to payment before the case was even transferred to arbitration, and long before Columbia paid a dollar toward the deemed-approved invoices. The payment came only after the arbitrator ordered it, which was itself years after Columbia had been litigating its defenses. Under a straightforward reading of *Graycor*, that sequence should have been disqualifying: defenses asserted, payment withheld, eventual payment when compelled. Not only is this the precise inversion of what *Graycor* requires, but it is also directly contrary to the Act's *prompt* payment purpose.

In *Cannistraro*, the SJC acknowledged this problem and then, with some judicial dexterity, set it aside. The Court assumed without deciding that Columbia's conduct ran afoul of *Graycor*'s payment prerequisite. Under that assumption, the Court concluded the issue need not be resolved, not because *Graycor* was inapplicable, but because the standard for

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vacating an arbitration award operates on entirely different ground.

The Pivot to Arbitration Law

Under MGL c. 251, § 12(a)(3), a court may vacate an arbitration award only where the arbitrator exceeded his/her authority, which includes awarding relief “prohibited by law.” That phrase has a specific meaning in Massachusetts arbitration jurisprudence. It means relief that contravenes an express statutory provision or violates public policy. It does not mean relief that reflects a misreading of *Graycor* — even an arguably significant one.

- An arbitrator who applies the law incorrectly has committed an error.
- An arbitrator who awards relief the law expressly forbids has exceeded his or her authority.

Those outcomes are categorically different, and courts may intervene only in the latter case.

This is where the SJC’s analysis turns on the Prompt Payment Act’s silence. Section 29E establishes the consequences for failing to timely reject an invoice: deemed approval. What it does not do, however, is expressly address what remedies remain available to a contractor who subsequently pays a deemed-approved invoice in full. There is no express statutory provision prohibiting recoupment after payment. Because the arbitrator operated in that statutory gap, and because AAA Construction Rule 48 gave him broad remedial authority, the SJC decided that his award could not constitute relief “contrary to express statutory provision” regardless of whether it correctly applied *Graycor*.

The public policy argument fared no better. The SJC noted that the arbitrator had required full payment before entertaining Columbia’s recoupment claim which, if not according to the letter of the statute, at least paid homage to its intent. But that characterization glosses over the timeline: Columbia did not voluntarily pay first and then seek recoupment. It asserted affirmative defenses, litigated for years, paid only when ordered to do so, and then pursued recoupment. That would seem to be a materially different posture than a contractor who reads *Graycor*, writes a check, and files a counterclaim the same day. The SJC’s treatment of the public policy question arguably papers over this distinction rather than resolving it.

Had the underlying decision been authored by a superior court judge rather than by an arbitrator, one would expect a much different result (and a much deeper clarifying Prompt Payment Act analysis, which left the Massachusetts construction bar and industry hanging in suspense).

What Practitioners and Contractors Should Take Away

Cannistraro introduces meaningful uncertainty about *Graycor*’s payment-first rule in the arbitration context. The SJC’s assumption-without-deciding on the *Graycor* issue means that the question of whether defenses asserted before payment are permanently waived or merely suspended remains unsettled. Contractors in arbitration proceedings governed by broad AAA remedial authority may find arbitrators willing to follow *Cannistraro*’s implicit logic and allow recoupment claims to proceed after compelled payment, even where the *Graycor* sequencing was never satisfied in any meaningful sense. The more conservative approach would be to follow the *Graycor* sequencing and make payment of a deemed-approved application by or before the time a contractor intends to raise defenses or counterclaims in response to the application.

The Prompt Payment Act is a payment-timing mechanism, not an adjudication on the

merits. *Cannistraro* confirms that getting to the merits still requires paying first — but leaves open just how literally that requirement will be enforced when an arbitrator decides to look the other way.

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