

Construction Litigation Update: NJ Appellate Division Requires Attorney-Fee Shifting in Enforcing the New Jersey Prompt Payment Act

What You Need to Know

- The New Jersey Prompt Payment Act provides a remedy to contractors and lower-tier subcontractors when their payments are approved and certified, but not remitted.
- The New Jersey Appellate Division has held that the attorney fee-shifting component of the New Jersey Prompt Payment Act is not optional. Once the Act is violated, the violator is required to pay the attorneys' fees of the claimant.

The New Jersey Superior Court, Appellate Division's recent ruling in *Coarc Co. Electronic Contractors v. Sanzari Asphalt Maintenance* serves as a critical reminder to real property owners of the importance of strictly complying with the requirements of the New Jersey Prompt Payment Act (NJPPA). The Court's decision in both this case and in last year's published decision in a related matter, *JHC Indus. Servs., LLC v. Centurion Cos., Inc.*, underscore how non-compliance with the NJPPA can result in undesirable outcomes for the non-compliant party.

Background

The New Jersey Prompt Payment Act (NJPPA) was enacted in 2006 to provide a timeline for payments due to contractors and lower-tier subcontractors for construction-related services provided to both public and private entities to improve real property. The Act provides legal recourse for contractors and subcontractors when payment for specified work on a project is wrongfully withheld by an owner or upper-tier contractor.

Under the Act, certification of a received invoice and approval (or denial) of the invoice must take place within 20 days of receipt of the invoice. The invoice is deemed automatically approved under the statute unless "the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment." Payment to the contractor must then be remitted within 30 days after certifying and approving the contractor's invoice. Covered payments by a general contractor to subcontractors must be made within a 10-day window.

The risks of non-compliance under the NJPPA are straightforward, with the nonpaying party held responsible for the invoice plus interest at the prime rate plus 1%, as well as reasonable costs and attorneys' fees if the party seeking payment takes successful legal action to collect payment.

Appellate Division Ruling

On May 16, 2022, the Appellate Division reviewed the importance of adherence to payment requirements under the NJPPA in the matter of *Coarc Co. Electronic Contractors v. Sanzari Asphalt Maintenance*, following on from a related decision in *JHC Indus. Servs., LLC v. Centurion Cos., Inc.*, issued in 2021.

In the most recent case, plaintiff Coarc appealed from a decision of the trial court that awarded contract damages against defendant Sanzari but denied attorneys' fees and interest under the NJPPA. The case involved Coarc's performance of electrical work for Sanzari pursuant to a series of verbal agreements. Coarc sent its invoices to Sanzari in the Fall of 2017. Sanzari did not communicate in writing any objection to Coarc's charges within 20 days of receipt of the invoices (or even later than that). When Sanzari failed to remit payment, Coarc filed suit alleging claims that included breach of contract and seeking an award of attorneys' fees and interest. The trial court ordered payment of certain amounts due under the contract but denied attorneys' fees and interest, finding that it was "very clear" from "various conversations" (but not writings) that Sanzari did not agree to pay the amounts invoiced by Coarc.

The Appellate Division reversed, explaining that the NJPPA makes clear that in "any civil action brought to collect payments pursuant to this section ... the prevailing party shall be awarded reasonable costs and attorneys' fees." In its ruling, the Court relied in part on *JHC Indus. Servs., LLC v. Centurion Cos., Inc.*, in which the Court explained that the NJPPA is a "fee-shifting statute" that makes an award of reasonable costs and attorney's fees "mandatory" to a prevailing party. The Court noted that the clear purpose of the fee-shifting was to ensure that subcontractors are fully and promptly paid for their work.

Key Takeaways

The two cases cited in this Client Alert demonstrate the ramifications of failure to comply with the NJPPA, absent language in the parties' contract to the contrary (i.e., contracting around the NJPPA). If an owner fails to make prompt payment because there is a dispute, it must advise the contractor of the nature of that dispute in writing within the timeframe provided by the statute. While parties are free to contract around the statutory deadlines in the statute, if they do not, then they will be subject to the requirements of the statute, including the imposition of attorneys' fees.

Clients should be mindful that compliance requirements under the NJPPA are mandatory and that all disputed charges should be dealt with promptly, in writing, and within the timeframe specified under the NJPPA.

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