

CONSTRUCTION LAW NEWSLETTER

- Re: (1) **Pennsylvania's Prompt Pay Act**
(2) **Update on Bilt-Rite Decision**
(3) **Can City Compel a Developer to Use Union Labor on Private Projects?**

1. **Prompt Pay Act.**

There was a recent case decided by the Pennsylvania Superior Court, American Rock Mechanics, Inc. v. N. Abbonizio Contractors, Inc. and Fidelity and Deposit Company of Maryland which restated a principal that all construction project participants should aware of:

- The Court ruled that a general contractor's contract with a Subcontractor/Supplier controls the payment terms and that the Pennsylvania Prompt Pay Act does not give a defense to the Owner or Contractor to withhold payment. In the Prompt Pay Act, it provides that the Contractor must pay the Subcontractor within 14 days of receipt of the money from the owner. The Court granted a Judgment on the pleadings to the Supplier/Subcontractor with interest and penalty, etc., as permitted by the Prompt Pay Act. The significance of the case is to restate that a general contractor's contract will prevail if an earlier payment is required, that you will not be able to use as a defense the provision that a Subcontractor must be paid within 14 days after receipt of the money from the owner. (In this case, the contract required payment in 30 days, whereas the owner did not pay the General Contractor long after the 30 days.)
- The case also states that when answering a Complaint and alleging a counterclaim/setoff, the defendant must be very specific in their pleading, otherwise, the counterclaim/setoff will be ignored by the Court. A defendant must give chapter and verse and specific claims for the counterclaim/setoff to be recognized by the Court.
- The Court also reminded Contractors that the Prompt Pay Act requires the General Contractor to give to the Subcontractor information on payment terms under the contract between the Contractor and Owner.

2. **Update on the Bilt-Rite Decision**

- Update – Justice Ronald Castille stated in the "Bilt-Rite Decision" "We hereby adopt Section 552 as the law in Pennsylvania in cases where information is negligently supplied by one in the business of supplying information, such as an architect or a design professional and where it is foreseeable that the information will be used and relied upon by third persons, even if the third parties have no direct contractual relationship with the supplier of information". A Federal Court Judge, Judge Baylson, in Philadelphia ruled that the Bilt-Rite decision "is best understood as limiting the application of the economic loss doctrine only to design professionals and those engaged in the business of home construction and home sales and not as to all negligent misrepresentation claims".

3. **Can the City of Philadelphia Compel a “Developer to Use Union Labor on Private Projects.”**

- Philadelphia City officials, believe it or not, filed a lawsuit to compel a developer on a private project to use union labor as required by the Philadelphia Zoning Board of Adjustments in granting a variance. The City said that the Developer promised to use union contractors on the project, plus installing central air conditioning and garbage disposals in each unit. The Zoning Board granted a variance and the City alleges that the developer breached “...their implied duty to deal with (the City) in good faith”. Only in Philadelphia. This case is now pending in the Federal Courts, we will update you as the case moves to trial.