



White and Williams LLP



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## PROMPT PAYMENT OR PENALTY

### ZIMMERMAN V. HARRISBURG FUDD I, L.P., PENNSYLVANIA SUPERIOR COURT

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On October 19, 2009, the Pennsylvania Superior Court decided an important case in favor of unpaid contractors. In *Zimmerman v. Harrisburg Fudd I, L.P.*, 2009 Pa. Super. 202, 2009 WL 3337594, the Court ruled that a contractor who obtained a judgment against an owner under the Contractor and Subcontractor Payment Act (CASPA)<sup>1</sup> for an unpaid bill may recover post-judgment interest and penalties, as well as attorney's fees and expenses incurred to collect the money. Importantly, the Superior Court concluded that contractors may collect the attorney's fees and expenses incurred to collect both the judgment and the fees incurred to collect the judgment.

The purpose of CASPA is to ensure prompt payment by owners to contractors, contractors to subcontractors, and subcontractors to other subcontractors. It mirrors the Pennsylvania Prompt Pay Act,<sup>2</sup> which seeks to ensure that contractors on public projects honor their contractual obligations and promptly pay subcontractors. Specifically, CASPA requires, unless the parties agree otherwise, payment either 20 days after the end of a billing period or 20 days after delivery of the invoice, whichever is later. If payment is not made by the 20-day deadline, CASPA mandates a statutory penalty. It also entitles the "substantially prevailing party" in any CASPA proceeding to recover a reasonable attorney fee.

In April 2005, Zimmerman contracted with Fudd to install flooring and wall improvements for Fudd's new restaurant. Zimmerman completed the job and sent Fudd an invoice. After four months passed without payment, Zimmerman sued Fudd, arguing that he violated CASPA's prompt payment provisions. On September 20, 2006, a board of arbitrators awarded Zimmerman his invoice amount, statutory interest, a penalty and attorney fees.

Unfortunately, Fudd did not promptly pay the award. In December 2006, Zimmerman executed on the judgment by garnisheeing Fudd's bank account with Citizens Bank. Fudd filed a claim for exemption from execution, which the trial court denied. Fudd also filed an Emergency Motion to Stay Execution, which the trial court also denied. Fudd subsequently appealed the trial court's denial of its Emergency Motion to Stay Execution on April 3, 2006. Citizens Bank paid Zimmerman on April 3, 2006. One year later, on April 28, 2008, the Superior Court affirmed the trial court's decision on the exemption issues.

Zimmerman subsequently filed a motion to recover statutory interest calculated from the day after the arbitration award to the date he was paid, a penalty for the same period, and attorney's fees and expenses incurred during the post-award period. The trial court denied Zimmerman's motion.

On appeal, the Pennsylvania Superior Court sided with Zimmerman and decided that he could recover post-judgment interest and penalties, as well as attorney's fees and expenses resulting from efforts to collect the award. Notably, the Superior Court analyzed whether Section 512(b) of CASPA permits the recovery of the attorney's fees and expenses that Zimmerman incurred in the post-award collection proceedings, including Fudd's appeal on its exemption claim and Zimmerman's appeal of the trial court's denial of his request for statutory interest, penalty, and attorney's fees and expenses for the post-award period. The Superior Court concluded that it does.

Section 512(b) provides that "the substantially prevailing party in any proceeding to recover any payment under this act shall be awarded a reasonable attorney fee in an amount to be

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determined by the court or arbitrator, together with expenses.” The Superior Court reasoned that the language “any proceeding to recover any payment under this act” is broad enough to encompass any phase of the litigation, including the collection-of-judgment phase. It noted the worthlessness of a CASPA victory if a contractor must spend his entire recovery on attorney’s fees to collect his judgment. Further, the award of counsel fees in this situation was not discretionary. Where a trial court determines that one party “substantially prevails,” the court must award attorney’s fees.

Additionally, Zimmerman could collect the attorney’s fees and expenses he incurred to collect the attorney’s fees and expenses he incurred to collect the judgment. The Superior Court deemed the question of Zimmerman’s entitlement to collection-of-fees fees identical to the question of his entitlement to collection-of-judgment fees. Forcing contractors to incur expensive litigation costs, including in the collection-of-fees phase, defeats the purpose of CASPA to make a contractor whole by awarding him his litigation costs when he is a substantially prevailing party.

In these tough economic times, owners, contractors, and subcontractors may have trouble getting paid. If your job is finished and you are not paid or if you were forced to incur attorney’s fees and expenses to collect a judgment, White and Williams may be able to help you. Consider contacting our Construction Practices Group to assist you.

<sup>1</sup> 73 Pa.C.S.A. §§ 501-516.

<sup>2</sup> 62 Pa.C.S.A. §§ 3101-3102.

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