

## Pennsylvania's Prompt Payment Act Applies to Mixed Use Construction

Generally, Pennsylvania's private prompt payment act, the Contractor and Subcontractor Payment Act, (CASPA)<sup>1</sup> does not apply to improvements to real property that consists of six or fewer residential units.<sup>2</sup> But, in a recent issue of first impression, the Superior Court of Pennsylvania ruled that CASPA may apply to a mixed-use construction contract even when the contract's scope includes residential construction, finding that CASPA applied to a contract for renovations of a building that contained a daycare facility, a church, and two residential units.<sup>3</sup>

In *El-Gharbaoui v. Ajayi*, a general contractor entered into a contract with two individual building owners to renovate a building. After demolition work was completed, the work stopped for several months while the project awaited plans from the engineer. The general contractor eventually resumed the project by performing some masonry work. However, during the winter when the project was stalled, the property deteriorated and became hazardous. The general contractor approached the city department of licenses and inspections with safety concerns. Ultimately, the city condemned the property. The general contractor immediately asked to be removed from the building permit, terminated the contract, and filed a mechanics' lien claim for its unpaid work. The general contractor sued to enforce the lien claim, and the trial court ultimately awarded the full amount of the unpaid work, interest, and attorney's fees and costs. On appeal, the Superior Court affirmed the portion of the judgment for unpaid work, but vacated the portion of the judgment for interest and attorney's fees and costs.

Following that appeal, the general contractor filed a new complaint against the owners for breach of contract governed by CASPA and again sought attorney's fees, interest, and penalties. The trial court rejected the CASPA claim, ruling that CASPA did not apply to the construction of a church, daycare, and two residential apartments. This time, the general contractor appealed.

The Superior Court reversed the trial court's ruling, finding that interest and attorney's fees pursuant to CASPA were proper. Writing that courts must accord CASPA a liberal construction to promote justice, and promoting CASPA's broad applicability, the court held that "CASPA applies to construction contracts except those contracts involving public works projects and construction contracts for the improvement to real property consisting solely of six or fewer residential units under construction simultaneously." The court noted that the invoices in dispute were largely for work to the building's foundation, and thus did not relate only to the building's residential units.

The Superior Court's ruling in *Ajayi* eliminates any grey area regarding the application of CASPA for owners and contractors entering into construction contracts for projects involving mixed-use construction projects where the work performed does not relate solely to the residential portions of the project. While a question may remain as to the applicability of CASPA to work on only a residential portion of a mixed-use building, *Ajayi* provides good guidance to industry professionals regarding construction in mixed-use facilities.<sup>4</sup>

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If you have any questions regarding CASPA and your construction project, Cozen O'Connor's Construction Practice Group has extensive experience litigating such claims for both owners and contractors and is ready to assist.

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<sup>1</sup> 73 P.S. § 501 *et seq.*

<sup>2</sup> *Id.* § 503(a).

<sup>3</sup> *El-Gharbaoui v. Ajayi*, No. 3057 EDA 2019, 2021 WL 3046856 (Pa. Super. Ct. July 20, 2021) (marked for publication).

<sup>4</sup> The *Ajayi* opinion also addresses issues related to collateral estoppel, statute of limitation, and evidentiary issues. However, the focus of this article is solely on the CASPA-related issues.