

CASE ANSWERS WITHHOLDING QUESTION

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In *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, issued on May 15, 2018, the California Supreme Court addressed whether a direct contractor can withhold payment from a subcontractor based on the “good faith dispute” exception of the state’s prompt payment laws if the “dispute” concerns *any dispute* between the parties ... or whether the dispute must *be directly relevant to the specific payment that would otherwise be due*.

The issue was this: Could a direct contractor who is back-charging a subcontractor for defective work withhold up to 150% from any pay application submitted by that subcontractor, or is the good faith withholding exception limited to disputes related to that specific pay application. Addressing this issue with respect to one of the state’s prompt payment statutes, Civil Code section 8814, the California Supreme Court found that the good faith withholding exception only applies if there is a “good faith” dispute as to a specific pay application.

Civil Code section 8814 requires that direct contractors pay their subcontractors retention within 10 days after receipt of payment from the owner or be subject to prompt payment penalties of 2% per month unless there is a “good faith dispute.”

The California Supreme Court looked at similar statutes, the underlying purpose of the prompt payment laws and the legislative history of the various prompt payment statutes. The Court found when drafting the good faith withholding exception, the legislature used language that plainly limits the good faith exception to the circumstances in which the dispute relates to the specific amount or payment at issue.

The Court found allowing a direct contractor to withhold 150% of a disputed amount for any dispute could create a windfall for the direct contractor.

The California Supreme Court found it is clear that the good faith disputes that justify withholding are those that relate to the work directly relevant to the specific payment due. *United Riggers* resolves the split of authority between *Martin Brothers Construction, Inc. v. Thompson Pacific Construction Inc.* (2009) 179 Cal.App.4th 1401 which held that any bona fide dispute can justify withholding of retention and *East West Bank v. Rio School District* (2015) 235 Cal.App.4th 742 which held that only disputes related to the retentions security functions can justify withholding payment. The breadth of the Supreme Court’s ruling would appear to put an end to similar interpretation issues under other prompt payment statutes.

If you have any questions regarding this , please feel free to contact Kevin Cauley of Semerdjian Cauley & Moot, LLP at kcauley@sscmlegal.com or 619.236.8821.