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Hello,



COURT FINDS CONTRACTOR TO BE UNJUSTLY ENRICHED AND AFFIRMS AWARD OF DAMAGES TO SUB-VENDORS AND SUB-SUBCONTRACTORS

By Kevin S. Hendrick and Brandon J. Muller, Clark Hill PLC

Can a contractor be held responsible as a guarantor of the debts of its subcontractors? According to a recent Michigan Court of Appeals decision, the answer is seemingly, "yes."

BACKGROUND

In *Morris Pipes v Centerline Piping, Inc*, Court of Appeals Nos. 268717 and 268718 (December 12, 2006), Morris Pipes (and others) were vendors to Centerline, which was a subcontractor to EBI-Detroit on a wastewater treatment facility for the City of Detroit. In the course of the project, Centerline went out of business. At the point that it did so, some of the vendors of Centerline had already provided equipment and material to the project, but they had not been paid by Centerline. EBI-Detroit hired a replacement contractor to complete Centerline's work, and paid in excess of the balance of the Centerline contract. However, no one ever paid the Centerline vendors for the equipment that was delivered to the site and incorporated into the project.

UNJUST(?) ENRICHMENT

The vendors were late on filing a claim on any bond, and thus waived their bond claims. The vendors then sued EBI-Detroit, the general contractor, on the theory of quantum meruit or unjust enrichment. They argued that, by using the materials that had been provided at the site, without ever determining whether the vendors had been paid, EBI-Detroit improperly retained a benefit at the vendors' expense. The trial court agreed and granted partial summary disposition in favor of the vendors as to the unjust enrichment claim. On appeal, the Court of Appeals affirmed, holding that on this theory of equity, even though there was no contract between EBI-Detroit and the vendors, even though the vendors had waived their claims against the bond, and even though EBI-Detroit had already paid in excess of the contract sum for the work, EBI-Detroit still had a duty to pay for the material.

ANALYSIS

The Court of Appeals did not clarify whether its decision assumed that the cost of the materials had been included in one of Centerline's pre-termination pay applications which had, in fact, been paid to Centerline. If the cost had been included, then the court has, contrary to its assertion otherwise, made every general contractor a guarantor of its subcontractors. If the cost was not included, and the material was never paid for, then the decision perhaps makes some sense. However, because the opinion is not based on the cost having been included in a pre-termination pay application, the order requiring payment to the vendor can be construed as a payment guarantee by the general contractor.

This decision has created significant risk to general contractors in the State. Under the current pay application processes, general contractors do not serve as guarantors of payment to sub-vendors and sub-subcontractors. If the decision is not overturned, general contractors may have to modify

their existing contracts and payment processes, and begin issuing joint checks for every subcontractor/vendor on every project.

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