



Legal Brief

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Withholding undisputed funds based on your refusal to sign a release is illegal

Have you ever refused to sign a release or waiver in exchange for payment fearing that by signing it, you may be waiving your right to recover other costs?

Has your customer ever refused to pay funds it admits it owes you simply because you refuse to sign a release?

Sadly, this scenario is all too common in the construction industry. As projects near conclusion, there are often a handful (or more) of pending, unresolved “claims,” or requests for additional compensation.

In an effort to coerce you into abandoning these claims, (or significantly discounting them) some unscrupulous actors withhold amounts which they have no legitimate basis to dispute unless you sign their release. The dilemma you face is that by signing the release, you risk waiving your right to pursue the other claims. They hope you will really need that progress payment or that retainage check, and they deny you payment hoping you’ll cave in and drop the claim, or inadvertently waive it by signing a broadly worded release.

All contractors and subcontractors need to know that coercive conduct like this is illegal. It violates the Prompt Payment Act (“PPA”) and the Contractor and Subcontractor Payment Act (“CASPA”). These two very important Pennsylvania state laws are designed to punish parties who fail to uphold their payment obligations on construction projects. The PPA applies to public projects while the CASPA applies to private projects. A party that violates these laws can be required to pay penalties, interest and attorneys’ fees in addition to the underlying amounts. Both laws specify when payment from the owner to the general con-

tractor, and from the general contractor to subcontractors, must be made. These timing provisions, while important, are not the focus of this article.

Rather, the focus of this article is another provision of these laws which deals with when payment can be withheld. The PPA states that when the owner or general contractor withholds payment “vexatiously or in bad faith,” the party from whom funds were improperly withheld can recover attorneys’ fees and penalties. The CASPA has nearly identical provisions. Unfortunately, state lawmakers did not elaborate on what constitutes the vexatious or bad faith withholding of funds and left it to the courts to decide on a case-by-case basis.

Not too long ago, the Pennsylvania Superior Court ruled that a party cannot withhold undisputed funds simply because the contractor or subcontractor refuses to sign a release where the release would result in the inadvertent waiver of unresolved claims. In *Pietrini Corp. v. Agate Construction Co., Inc.*, 901 A.2d 1050 (Pa.Super. 2006), a subcontractor submitted a request for payment to the GC for \$194,251. A substantial portion of this payment request was a claim for additional costs due to delays. The GC admitted owing \$101,900, but disputed the remaining \$93,251. However, in an effort to squeeze the subcontractor, the GC refused to pay anything because the subcontractor would not sign a release. Notably, the subcontract stated that payment would only be made to the subcontractor if it signed a release. The GC hung its hat on this clause, telling the subcontractor that since it refused to sign the contractually-required release, it wasn’t getting any payment at all – even the portion that the GC did not dispute. The subcontractor refused to sign the release

because signing it would likely have resulted in the waiver of the remaining \$93,251. This was because the GC’s form of release stated that in return for the payment, the subcontractor released all claims for payment of any nature whatsoever.

The subcontractor filed suit asserting that the GC’s refusal to release the undisputed portion of the request (the \$101,900) constituted the vexatious and bad faith withholding of funds. The subcontractor demanded attorneys’ fees and penalties under the Prompt Payment Act. The court agreed and ruled that the GC’s refusal to release funds that it had no basis to dispute was a “harsh negotiating tactic” that the law was intended to prevent. Accordingly, the court assessed the GC with penalties, expenses and attorneys’ fees related to the recovery of the \$101,900 that the GC had no basis to dispute. Notably, the subcontractor’s claim for additional costs was also litigated at the trial and the subcontractor was able to establish entitlement to approximately half of the additional costs it had claimed.

The lesson from the *Pietrini* case is clear. If your customer is trying to leverage you into abandoning legitimate claims by denying payment of funds it has no reasonable basis to dispute, it is illegal, and you should firmly demand payment of the undisputed amount while the disputed costs can be resolved later. Although the *Pietrini v. Agate* case involved the Prompt Payment Act, it is very likely that a similar result would be reached on a private project in which payments are subject to the Contractor and Subcontractor Payment Act. Contractors withholding funds from lower-tiers should be clear in explaining why they are withholding funds so they are not tagged with a claim for bad faith or vexatious withholding.