

# Querrey & Harrow

175 W. Jackson Blvd., Suite 1600, Chicago, Illinois 60604-2827  
www.querrey.com \* 800-678-2756

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## Withholding Payment of Disputed Amounts Subjects Contractor to Attorneys' Fees

The Illinois Appellate Court recently held that attorneys' fees could be assessed against a developer-contractor, which withheld amounts owed to a subcontractor for no just reason. *O'Connor Constr. Co. v. Belmont Harbor Home Dev., LLC*, 2009 Ill. App. LEXIS 285 (1st Dist. 2009).

The developer-contractor hired the subcontractor to perform rough and finish carpentry. The developer-contractor went out of business and a new developer-contractor took over the project. Work continued, and the subcontractor continued to complete the carpentry.

Fifty-eight change orders later, the subcontractor's total amount due under the contract was \$351,989.00. The subcontractor received payment of \$175,189.50, leaving a balance of \$176,799.50. However, both of the developer-contractors refused to pay the remainder of the balance owed. Soon after, the subcontractor filed a mechanics lien on the property and filed a suit.

At trial, the original developer-contractor admitted that the subcontractor was owed an undisputed amount of \$47,562.19 at the time the payment was being withheld. The court found for the subcontractor on the breach of contract and its complaint to foreclose on its mechanics lien. Subsequently, the subcontractor filed an application for attorneys' fees pursuant to Section 17 of the Mechanics Lien Act. *770 ILCS 60/17*. The Act specifically allows a court to award attorneys' fees to a party to a contract when the other party has failed to pay the full amount due under the contract *without just cause*. *770 ILCS 60/17* (emphasis added).

The property owner argued that the subcontractor had unjustifiably attempted to "frontload" its payment to include overhead and profit to which it was not yet entitled when it submitted its bill. The trial court refused to award attorneys' fees. On appeal, the subcontractor contended that it was entitled to attorneys' fees in the amount of \$49,450.00 and that

the trial court abused its discretion in failing to award fees. The appellate court agreed. The appellate court indicated that because the subcontractor was entitled to the whole contract amount as if it had been fully performed, its request for overhead and profit was proper.

The appellate court stated that owner-developers acknowledged in open court that they knew the subcontractor was owed an undisputed amount of \$47,562.19 pursuant to the contract. Yet, the developer-contractors paid the subcontractor nothing on that amount and offered no reasonable explanation for withholding payment on an amount which was not in dispute. The appellate court remanded the case to the trial court to determine that the fees were justified and reasonable in view of the actual time spent by the attorneys on the case.

This decision is important. A property owner or general contractor in a dispute with another contractor should think twice before withholding payment for the undisputed amount for work performed, as it may lead to the award of attorneys' fees if the debtor files suit to foreclose on its mechanics lien claim. This is especially important in a situation such as this, where there was both a disputed and an undisputed amount of money owed. Prompt payment of undisputed sums owed to contractors will prevent problems in the long run for contractors and property owners.

If you have questions about this opinion, please contact Patrick Wall at 312-540-7598 or [pwall@querrey.com](mailto:pwall@querrey.com) or Bruce Schoumacher at 312-540-7046 or [bschoumacher@querrey.com](mailto:bschoumacher@querrey.com).

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