SJC Addresses Prompt Pay Act and Arbitration—*J.C. Cannistraro, LLC v. Columbia Construction Co.*

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The Massachusetts Supreme Judicial Court (SJC) recently issued a key decision on the Massachusetts Prompt Pay Act in *J.C. Cannistraro, LLC v. Columbia Construction Co*., that impacts contractors and project owners involved in private contracts. *Cannistraro* addresses arbitration awards for recoupment of payments that are governed by the Prompt Pay Act.[1] Basing its decision largely on two related cases, *Cannistraro* ultimately supports the broad authority of arbitrators while also preserving the key protections of G.L. c. 149, § 29E.[2]

Case Background

The underlying case involved a general contractor, Columbia Construction Company, that retained a subcontractor, J.C. Cannistraro. During the project, disputes arose between Columbia and J.C. Cannistraro over change orders that Columbia initially rejected, but for which it failed to include certifications required under the Prompt Pay Act. Cannistraro filed suit alleging that Columbia violated the Prompt Pay Act and the case then proceeded to arbitration. There, the arbitrator made an initial ruling ordering Columbia to pay nearly $1 million in unpaid invoices after holding that the invoices were "deemed approved" under the Prompt Pay Act due to the denials not being timely certified. Columbia complied with the order and then filed a counterclaim seeking recoupment. The arbitrator held an evidentiary proceeding and issued an award to Columbia on its recoupment claim, finding that Columbia had met its burden in proving that Cannistraro's invoices were not fair and reasonable.

Cannistraro then filed a motion in Superior Court seeking to vacate the final award on the ground that the arbitrator had exceeded his authority. The Superior Court agreed with Cannistraro, holding that the arbitrator exceeded his authority because Columbia asserted defenses in its original answer before paying the disputed invoices as required under the Prompt Pay Act. Accordingly, the Superior Court vacated the recoupment award, and Columbia appealed the Superior Court's decision. On direct appellate review, the SJC questioned whether the judge erred in vacating the arbitration award on the ground of it exceeding the arbitrator's authority.

SJC's Holding in *Cannistraro*

Pointing to prior case law concerning arbitration, the SJC affirmed that public policy strongly favors arbitration and, as such, the scope of review of arbitration awards is narrow. Whether an arbitrator exceeded their authority falls under this limited review and applies only where the arbitrator: (1) granted relief beyond the scope of the arbitration agreement; (2) granted relief beyond that to which the parties agreed to be bound; or (3) granted relief that is prohibited by law. In *Cannistraro*, "the recoupment award was within the broad remedial scope of relief allowed under the AAA Construction Rules to which the parties agreed to be bound." Thus, the SJC considered only the third prong of the analysis, whether the arbitrator granted relief that is prohibited by law, to determine if he exceeded his authority.

The SJC confirmed that an arbitrator awards relief that is prohibited by law if the relief offends public policy or produces a result contrary to express statutory provision. Quoting *Graycor*, the SJC explained that the Prompt Pay Act does not expressly preempt common-law defenses to breach of contract, even if a payment application is not addressed as required. Thus, the arbitrator's award was not contrary to the Prompt Pay Act. To support a claim that the award offended public policy, the claimed offense must be exceptional, as policy favors deference to arbitration awards. Here, the arbitrator determined that the essential purpose of the Prompt Pay Act—to promote clear, prompt communication between parties involved in private construction contracts—had been met, as a good faith certification would not have provided any new information to Cannistraro about why its invoices were being rejected. The SJC ruled that even if this interpretation was incorrect as a matter of law, it did not rise to the level of violating public policy. As such, the SJC held that “the arbitrator did not exceed his authority in awarding recoupment of payments to Columbia, and thus the judge should not have vacated the arbitration award.”

Cannistraro does not alter the SJC's ruling in *Business Interiors Floor Covering Business Trust v. Graycor Construction Co.*, 494 Mass. 216 (2024) and, thus, strict compliance with the Prompt Pay Act is required. The decision does, however, emphasize the heightened level of deference given to arbitration awards while reinforcing that, if strictly followed, the Prompt Pay Act serves as both a sword and a shield in payment disputes concerning private projects in Massachusetts.

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[1] The Massachusetts Prompt Pay Act requires private construction contract payments to be made within specified, reasonable time periods. Specifically, the Act applies to private contracts valued at $3 million or more, not including “projects containing or designed to contain at least 1 but not more than 4 dwelling units.” MASS. GEN. LAWS ch. 149, § 29E.

[2] G.L. c. 149, § 29E requires private construction contract applications for payments, and the corresponding payments, to be made consistently and within reasonable time periods.