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CASPA Does Not Apply to Government Projects

by Patrick R. Kingsley and Isaac A. Hof

The Pennsylvania Supreme Court recently held that the Contractor and Subcontractor Payment Act (CASPA), 73 P.S. §§ 501-506 – which enables contractors and subcontractors to recover unpaid payments under construction contracts, as well as interest, penalties and attorneys’ fees – explicitly “does not apply to a construction project where the owner is a governmental entity.” Clipper Pipe & Serv., Inc. v. Ohio Cas. Ins. Co., --- A.3d ---, 2015 WL 3672275, at *5 (Pa. 2015).

The key legal issue before the Court was whether the term “association” referenced in the definition of “person” under the statute refers to the federal government. The issue arises because, under CASPA, “owner” is defined, in pertinent part, as “[a] *person* who has an interest in the real property that is improved and who ordered the improvement to be made.” Id. at § 502 (emphasis added). In turn, “person” is defined as a “[a] corporation, partnership, business trust, *other association*, estate, trust foundation or a natural individual.” Id. (emphasis added). Prior to the Supreme Court’s decision, there was conflicting precedent on the issue.

Relying heavily on principles of statutory construction, the Court found it unconvincing that the legislature intended the term “association” to encompass an entity of the federal government. A governmental entity, the Court explained, is dissimilar from the other terms included within the definition of “person,” such as a corporation, partnership, business trust, estate, trust foundation and natural individual. The Court also mentioned that statutes in derogation of sovereignty should be construed strictly in favor of the sovereign. Accordingly, the Court concluded that the federal government is not an “association” or a “person” or, derivatively, an “owner” for purposes of CASPA.

If you would like more information on this decision, contact Patrick R. Kingsley at 215.564.8029 or pkingsley@stradley.com; or Isaac A. Hof at 215.564.8013 or ihof@stradley.com.

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