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## Contractors Eagerly Anticipate Court’s Decision on Personal Liability

by Jeffrey D. Grossman

Just before Thanksgiving last year, the Superior Court of Pennsylvania gave an individual who formed a real estate LLC something to be thankful for and simultaneously disappointed a contractor seeking payment on an associated construction project. The Court ruled that the individual owner acting through the LLC could not be personally liable for payment under Pennsylvania’s Contractor and Subcontractor Payment Act.

In *Scungio Borst & Assoc. v. 401 Shurs Lane Developers, LLC, et al.*, — A.3d —, 2014 Pa. Super. 260 (2014), a contractor (Scungio) filed claims under the Pennsylvania Contractor and Subcontractor Payment Act, 73 P.S. §§ 501-516 (CASPA), against project owner 410 Shurs Lane Developers LLC (the LLC) and other defendants, including the 50 percent owner and president of the LLC, Robert DeBolt.

Mr. DeBolt filed for summary judgment as to all claims pending against him, and the trial court granted his motion. Scungio appealed, arguing that CASPA makes both the project owner (the LLC) and the individual “agent of the owner acting with the owner’s authority” (DeBolt) individually liable to unpaid contractors. CASPA defines an “Owner” as follows:

“A person who has an interest in the real property that is improved and who ordered the improvements to be made. The term includes successors in interest of the owner and agents of the owner acting with their authority.” 73 P.S. § 502.

From this definition, the contractor argued that the statute’s plain language unambiguously subjects owners and their agents acting with authority, which included DeBolt in this case, to CASPA liability for non-payment to the contractor.

The majority opinion for the Court rejected this argument, though it acknowledged that § 502 and other sections of CASPA, standing alone, seem to render an “owner,” as defined therein, liable for payment. The Court explained that another provision, § 504, plainly states that a contractor or subcontractor is entitled “to payment from the party with whom the contractor or subcontractor has contracted.” (Emphasis supplied by the Court.) Thus, the Court found that these conflicting concepts rendered the statute ambiguous, and, in construing the statute as a whole, the Court held that the General Assembly did not intend to subject individual agents of an owner to liability under CASPA.

In a nutshell, the majority of the Court determined that the legislature intended § 502 to reflect common law agency theory – essentially, that the owner-entity’s agents would bind the owner-entity. The Court’s decision also leaves unchanged well-established common law regarding individual agents or owners of a corporate entity

acting within their scopes of authority, which is that such actions render individual agents or owners personally liable only under a “veil piercing” theory.

Three judges dissented, agreeing with Scungio that CASPA expanded liability to include the individual owners and agents of the contracting entity. The dissenters would have reversed the trial court in granting DeBolt’s motion for summary judgment and remanded the case for further proceedings.

Scungio has taken another appeal, this time to the Pennsylvania Supreme Court. Owners and contractors eagerly anticipate that court’s decision, which should put to rest, at least under CASPA’s current form, the question of individual liability. ■



If you would like more information on this decision, contact Jeffrey D. Grossman at 215.564.8061 or [jgrossman@stradley.com](mailto:jgrossman@stradley.com).

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