

ALABAMA CONSTRUCTION LAW NEWSLETTER

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Subcontractor Claim Denied Due to Lack of Proper Licensing

Construction Services Group, LLC v. MS Electric, LLC, No. 2171099, 2019 WL 2710115 at *1 (Ala. Civ. App. June 28, 2019).

This case demonstrates the importance of following licensing protocols for specific projects. Even if a sub-contractor does have their general license, additional licensing may be required for certain jobs. The court considered a subcontractor who lacked an

additionally required license from the State Licensing Board for General Contractors on projects over \$50,000 when it submitted its bid and performed electrical work on the project. The court held that the subcontractor could not recover on a claim against the general contractor for unjust-enrichment because the contract itself and the work performed was considered illegal due to the lack of proper licensing for the specific

project. The court also found for the general contractor in a claim against the subcontractor for negligent misrepresentation because the subcontractor knew the job was over \$50,000 and claimed they had the appropriate license on their



Subcontract to Govern on Inconsistent Terms

Peach State Roofing, Inc. v. Kirlin Builders, LLC, No. 1:15cv526-CSC (M.D. Ala. Feb. 5, 2020).

This is an appeal filed from a 2018 case in the previous newsletter. It's worth noting that throughout the opinion, Maryland law was applied, but it was decided in the Middle District of Alabama. This case demonstrates that the subcontract will govern on inconsistent terms and damages to be awarded in the suit.

The court considered a previous dispute between a roofing subcontractor and a general contractor regarding inconsistent terms in the subcontract and the prime contract. Having noted that the terms in the subcontract controlled over those in the prime contract when dealing with inconsistent terms, the court further clarified here that the subcontract controls over the prime contract on issues of damage recovery. The court stated that the general

contractor and subcontractor owed each other contractual duties under the subcontract, and that the subcontract would therefore govern the award of damages to be paid out in the current suit. In this case, the subcontractor was not entitled to attorney's fees and lost profits because the subcontract expressly limited damages to the actual cost of work and labor, plus ten percent.

Arbitration Clause Not Enforced Due to Lack of Signatures

Baker v. Rabren General Contractors, Inc., No. 3:19-cv-00572-RAH (M.D. Ala. May 5, 2020).

This case demonstrates the importance of following formalities, even when the parties have had prior dealings with one another that were informal.

A general contractor motioned to compel/enforce an arbitration clause in a subcontract against a

subcontractor, despite the subcontract not being signed by either party. The subcontract contained explicit language, bolded at the top of each page, that in order for the subcontract and the clauses within to be valid, the subcontract must be signed by both parties. Both had worked with each other in the past, and often agreed by handshake, but the court held that

the subcontract was clear—to be valid, it must be signed by both parties. Therefore, the arbitration clause in the subcontract could not be enforced. The general contractor tried to argue that the subcontractor agreed to the terms because he proceeded with his work without signing. However, because neither party signed, the court rejected this argument.

Proper Procedures Must Be Followed Regarding Termination

Rolin Construction, Inc. v. Wind Clan Construction Co., Inc., No. CA 18-0032-MU (S.D. Ala. April 24, 2020).

The court in this case considered, among other things, a subcontractor that was terminated because of several deficiencies in quality of work, but then brought back to the job through an informal agreement with the general contractor to correct the deficiencies. The deficiencies led to an issue with scheduling and miscommunication on dates because of multiple new fixes needing to be made, which seemed to delay other aspects of the job. Eventually a supplemental subcontractor was brought in to correct the deficiencies, and the

prices for the work performed by the supplemental subcontractor would be deducted from the amount owed to the original subcontractor.

The costs ended up exceeding what was owed to the subcontractor, and the general contractor sent a letter stating that no payment would be made for any acceptable work performed up to termination and bringing in the supplemental subcontractor.

The court found that the general contractor did not follow notice requirements from the subcontract to formally terminate the subcontractor and that, despite multiple errors in work, the subcontractor did not delay the job on its schedule overall. The general

contractor was ordered to pay the subcontractor for acceptable work performed. However, the court also found that the subcontractor breached the informal agreement with the general contractor to come back and complete work, which including coming back after the architect and owner completed their punch lists.



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