

## ALABAMA CONSTRUCTION LAW NEWSLETTER

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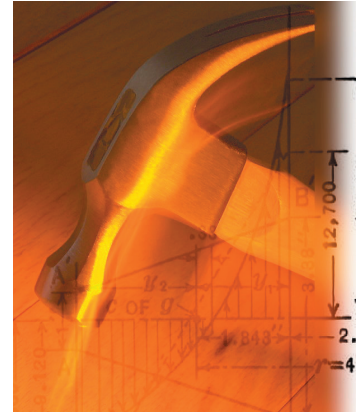
The following are summaries of recent court decisions affecting the construction industry in Alabama. If you have any questions, please contact Larry S. Logsdon or Oscar M. Price at 205-870-0555 or at [llogsdon@wallacejordan.com](mailto:llogsdon@wallacejordan.com).

### ***Court Reverses Challenge to Competitively Bid Project***

*Alabama Municipal and Environmental Engineers, Inc. v. Slaughter Construction Co.*, 961 So.2d 889 (Ala. Civ. App. 2007).

In this case a contractor sought money from a state agency who chose to award a competitive State contract to a different bidder. The court analyzed the Competitive Bid Law for the State of Alabama, saying that it is in place to protect the citizens and taxpayers of the State, not as a cause of action for disap-

pointed bidders. A disappointed bidder's sole remedy under the Competitive Bid Law is to "maintain an action to enjoin the execution of the contract and, if successful in obtaining that injunction, to seek an award of its bid-preparation costs." The court found that the contractor had no available remedy and therefore the trial court's verdict of over \$5,000.00 in compensatory damages and attorney's fees was reversed.



### ***Arbitration Not Waived***

*Paragon Limited, Inc. v. Boles*, 987 So. 2d 561 (Ala. 2007).

The Supreme Court of Alabama was asked to decide when a claimant has waived his/her right to file for arbitration against a homebuilding contractor who allegedly fails to complete construction of a house and allegedly overcharged for work performed. The Court acknowledged that the right to arbitration may be waived when both (1) the party seeking arbitration has substantially invoked the litigation process, and (2) the party opposing arbitration would be substantially prejudiced by an order requiring it to submit to arbitration. Here, the homeowner did not substantially invoke the litigation process by merely "filing a lien against the property that was the subject of the contract containing the arbitration clause, by answering Boles's complaint, and by contemporaneously filing a motion to compel arbitration."

### ***Contractor Entitled to Interest on Amount Owed***



*Jernigan v. Happoldt*, 978 So. 2d 764 (Ala. Civ. App. 2007).

The Court found that a contractor that was entitled to compensation for his work on a house also was entitled to interest in the amount of 12% on the amount that he was owed. The Court found that in order to recover interest before the time of a judgment: (1) the amount

due must be certain; (2) the time when it is due must be certain; and, (3) the amount due and time of payment must be known to the debtor. This case also involved an orally modified contract. The modification did not limit the contractor's right to claim interest on the amount he was owed.

## ***Attorneys' Fees Can Be Awarded Irrespective of Interest Penalty Award***

*Rogers v. Willard, Inc. v. Harwood*, 2007 WL 2684542 (Ala. Civ. App. 2007).

In this case, Alabama's Prompt Payment Act, which provides for timely payments to contractors and subcontractors, is dissected to determine whether attorney fees may be awarded when a party is not entitled to the statutory interest penalty under the Act. The court determined that attorney fees under this Act were not tethered to a determination of any bad faith on the part of the defendant. As such, attorney fees may be awarded irrespective of an award of interest penalty payments.

## ***Court Upholds Release Language***

*American Homes and Land Corp., Inc. v. C.A. Murren & Sons Co., Inc.*, 990 So.2d 871 (Ala. 2008)

Complicated release language in a settlement agreement between a subdivision developer and builder was upheld when a developer tried to bring a second claim against a builder for damage on a different property. Both properties had similar damage that was caused by the

builder, however upon settling the first case, the settlement agreement included language that released the builder from any further suits regarding any construction which had been completed within that subdivision. The court stated that the developer should have read the agreement and should not have executed it if he was unhappy with the terms.



## ***Home Builders' Licensure Board License Required***

*Murry v. City of Abbeville*, 997 So.2d 299 (Ala. 2008).

A home builder was required to have a license from the Home Builders Licensure Board as required by Ala. Code 1975 § 34-14A-1 et. seq. regardless of whether the an individual municipality within the county has specifically adopted the Act. However, the court found that the homeowner had no claim against the city for giving a builder's permit to the unlicensed builder.

## ***Court Disallowed Claim in Separate County***

*Ex Parte J. C. Duke & Associates, Inc.*, 2008 WL3877733.

A roofer subcontractor's claim was dismissed when the roofer attempted to file a Complaint in one county after he had already filed a counterclaim in another county. The court found that the addition of a new party did not create a new, separate cause of action, so the roofer was not permitted to assert claims in a new jurisdiction which arose out of the same transaction and occurrence.

## Liquidated Damages Provision Upheld



*Stonebrook Development, LLC*, 985 So.2d 960 (Ala. Civ. App. 2007).

When a contract to develop a roadway in Elmore County lasted 5 months longer than the original one-month contract time, issues of the liquidated damages provision in the contract arose. The court upheld a liquidated damages provi-

sion allowing for per day damages of one half of one percent of the total contract price of \$203,878. However, the court also found that the contractor was not liable for all of the days that the project was late if the developer was responsible for some of the delay.



Mike Jackson, Tom McKnight, Coy Macoy, Oscar Price, Dale Wallace, Larry Logsdon

*If you have any questions or comments about these recent decisions or other matters, please contact Larry Logsdon or Oscar Price via phone at (205) 870-0555 or via e-mail at [llogsdon@wallacejordan.com](mailto:llogsdon@wallacejordan.com).*

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