

Construction Law Update

REP Custom Builders v. McBride (Arizona Court of Appeals 2019)

The Court confirmed that the Arizona Statute of Repose (A.R.S. Sec. 12-552) applies to indemnity claims and insurance claims related to construction contracts. The Statute of Repose requires a claimant to file any contract lawsuit within 8 years (9 if the defect is discovered in the last year) of substantial completion of a project (see statute for definition). This is meaningful because in many cases indemnity lawsuits are not filed until after the underlying lawsuit (e.g. project owner claims filed against the general contractor) has been resolved. In many cases these underlying lawsuits will be filed years after completion and take years to resolve. This could push general contractors (and their insurers) up against a deadline to file. This case is not official precedent, but it will likely encourage general contractors (and their insurers) to bring suit for indemnity earlier in the process and force subcontractors into the litigation while it is ongoing. We have seen an uptick in this type of litigation over the last few years.

Arizona Hydro Pro v. Lakridis (Arizona Court of Appeals 2019)

The Court upheld a trial court award permitting the recovery of overhead, profit and taxes under a theory of unjust enrichment. In cases where a party receives the benefit of work performed (or materials provided) by a party with whom it does not have a contract, and does not pay anyone for that work, the party providing the work (or materials) can have a claim for unjust enrichment. For example, if a subcontractor performs work and the owner never pays the general contractor, the subcontractor can bring a claim for unjust enrichment against the owner. In prior cases the amount of the claim was often limited to not include overhead, profit or tax. This case was not officially reported but it offers insight on how the court may rule in the future. General Contractors should be wary because sub-subcontractors could make a claim against them if the sub-subcontractor was not paid by the subcontractor and the General Contractor did not pay the subcontractor. These remedies are in addition to any lien or bond rights.

Employment Law Update

The Department of Labor issued a final rule regarding worker eligibility for overtime pay under the Fair Labor Standards Act (FLSA). The new rule raises the “standard salary level” from the currently enforced level of \$455 to \$684 per week (equivalent to \$35,568 per year for a full-year worker). It also raises the total annual compensation level for “highly compensated employees” from \$100,000 to \$107,432 per year. The rule is effective January 1, 2020. This will increase the number of employees eligible for overtime pay.