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# Recent Construction Law Decision Holds That Contract Payment Terms Control Over New Jersey's Prompt Payment Act

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In *JJD Electric, LLC v. SunPower Corporation, Systems, et al.*, the District Court of New Jersey dismissed multiple counts of plaintiff JJD Electric's amended complaint, holding that the terms of the plaintiff's subcontract control over its ancillary theories of liability. However, the court allowed the plaintiff's fraudulent misrepresentation and unjust enrichment claims to proceed insofar as they challenged the very validity of the subcontract, as the Magistrate Judge held previously in granting the plaintiff leave to file the [amended complaint](#).

Defendant SunPower subcontracted JJD Electric to provide electrical contracting services in connection with the installation of power equipment at various project locations. JJD Electric asserted claims against SunPower for breach of contract, fraudulent misrepresentation, and unjust enrichment, as well as a claim under New Jersey's Prompt Payment Act (PPA), seeking approximately \$2 million for the alleged unpaid balance of work performed and another approximately \$4 million for alleged delay damages.

Importantly, as to the PPA claim, the court recognized the scarcity of case law addressing the elements of an action under subsection (b) of the PPA dealing with timing of payments between prime contractors and subcontractors. Based on the plain language of the PPA and guidance from other courts, the court adopted the following elements:

- The subcontractor has performed contractual work for the prime contractor.
- The contractual work has been approved by the owner, the owner's agent, or the prime contractor.

- The prime contractor and subcontractor have not otherwise agreed to terms of payment in writing.
- The prime contractor has not paid the subcontractor within 10 calendar days of receipt of a proper invoice.

In dismissing JJD Electric's claim under the PPA, the court made clear that where, as here, a contract includes payment terms, those payment terms control. The PPA, in other words, serves as a backstop where a contract is silent on payment terms or contains terms consistent with the PPA. This decision thus adds to the scant case law interpreting the elements of a PPA claim.

The court also dismissed JJD Electric's breach of contract claim for failure to make payment because JJD Electric did not provide unconditional lien waivers, which were a stated condition precedent to payment and were not impossible to provide, contrary to JJD Electric's argument and as refuted by the complaint. Similarly, JJD Electric's claim for delay damages failed because the subcontract explicitly barred recovery of consequential damages that, the court made clear, include damages resulting from interruption and delays of performance.

JJD Electric's claim for breach of the implied covenant of good faith and fair dealing was also dismissed, as the court found that while there is no universal test for establishing such a claim, typically there must be a showing of bad faith with a malicious motive to deny the plaintiff some benefit of the bargain originally intended by the parties. Further, bad faith cannot be inferred from pre-contract acts. Simply claiming that certain conduct is in bad faith, therefore, will not be sufficient to survive a motion to dismiss where there is no connection between the alleged conduct and the supposed bad faith.

Finally, in sustaining JJD Electric's claims for fraudulent inducement and unjust enrichment, the court explained that a viable claim for fraudulent inducement permits a plaintiff to maintain an unjust enrichment claim in the alternative to a breach of contract claim, since the validity of the contract is in dispute.

In sum, this opinion is important in the area of construction law because it provides guidance on claims frequently raised and litigated. Namely, the decision made clear that as between the provisions of the PPA dealing with timing of payments and contrary terms in the governing contract, the governing contract controls; upheld the condition precedent payment terms in the contract; found that consequential damages include delay damages; and succinctly established the elements of a claim for breach of the implied covenant of good faith and fair dealing. It also sanctioned the frequent practice of pleading unjust enrichment in the alternative to a breach of contract claim where a claim for fraudulent inducement is sufficiently pled.

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