CHAPTER 6

Payments to Contractors, Subcontractors, and Suppliers

ARTICLE 1

Payments to Contractors, Subcontractors, and Suppliers

**SECTION 29‑6‑10.** Definitions.

 Unless the context otherwise requires in this chapter:

 (1) “Contractor” means a person who contracts with an owner to improve real property or perform construction services for an owner.

 (2) “Improve” means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill, or landscape any real property, or to construct driveways and roadways, or to furnish materials, including trees and shrubbery, for any of these purposes, or to perform any labor upon these improvements, and also means and includes any design or other professional or skilled services furnished by architects, engineers, land surveyors, and landscape architects.

 (3) “Improvement” means all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and roadways on real property.

 (4) “Owner” means a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. “Owner” includes any state, local, or municipal government agencies, instrumentalities, or entities.

 (5) “Real property” means the real estate that is improved, including lands, leaseholds, tenements, and hereditaments, and improvements placed on the real property.

 (6) “Subcontractor” means any person who has contracted to furnish labor or materials to, or has performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property.

HISTORY: 1990 Act No. 426, Section 1.

Library References

Improvements 4.

Westlaw Topic No. 206.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 8:57, State Prompt Payment Acts.

**SECTION 29‑6‑20.** Right of contractor and subcontractor to payment.

 Performance by a contractor or subcontractor in accordance with the provisions of his contract entitles him to payment from the party with whom he contracts.

HISTORY: 1990 Act No. 426, Section 1.

CROSS REFERENCES

Application of this chapter, see Section 29‑6‑60.

Library References

Improvements 4.

Westlaw Topic No. 206.

**SECTION 29‑6‑30.** Time and manner of making payment to contractors and subcontractors.

 When a contractor or a subcontractor has performed in accordance with the provisions of his contract, the owner shall pay the contractor by mailing via first class mail or delivering the undisputed amount of any pay request within twenty‑one days of receipt by the owner of any pay request based upon work completed or service provided under the contract, and the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within seven days of receipt by the contractor or subcontractor of each periodic or final payment, by mailing via first class mail or delivering the full amount received for that subcontractor’s work and materials based on work completed or service provided under the subcontract.

HISTORY: 1990 Act No. 426, Section 1.

CROSS REFERENCES

Application of this chapter, see Section 29‑6‑60.

Interest on late payments, and waiver of requirements of this section by specific contract terms, see Section 29‑6‑50.

This chapter as not requiring payments to contractor any more frequently than required by contract, see Section 29‑6‑40.

Library References

Improvements 4.

Westlaw Topic No. 206.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 8, Payment.

**SECTION 29‑6‑40.** Grounds on which owner, contractor, or subcontractor may withhold application and certification for payment; contract terms unaffected.

 Nothing in this chapter prevents the owner, the contractor, or a subcontractor from withholding application and certification for payment because of the following: unsatisfactory job progress, defective construction not remedied, disputed work, third party claims filed or reasonable evidence that claim will be filed, failure of contractor or subcontractor to make timely payments for labor, equipment, and materials, damage to owner, contractor, or another subcontractor, reasonable evidence that contract or subcontract cannot be completed for the unpaid balance of the contract or subcontract sum, or a reasonable amount for retainage.

 Nothing in this chapter requires that payments due a contractor from an owner be paid any more frequently than as set forth in the construction documents, nor shall anything in this chapter affect the terms of any agreement between the owner and any lender.

HISTORY: 1990 Act No. 426, Section 1.

CROSS REFERENCES

Application of this chapter, see Section 29‑6‑60.

Library References

Improvements 4.

Westlaw Topic No. 206.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 8, Payment.

**SECTION 29‑6‑50.** Interest on late payments; specific waiver of requirements of sections 29‑6‑30 and 29‑6‑50.

 If a periodic or final payment to a contractor is delayed by more than twenty‑one days or if a periodic or final payment to a subcontractor is delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the owner, contractor, or subcontractor shall pay his contractor or subcontractor interest, beginning on the due date, at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due. However, no interest is due unless the person being charged interest has been notified of the provisions of this section at the time request for payment is made. Nothing in this chapter shall prohibit owners, contractors, and subcontractors, on private construction projects only, from agreeing by contract to rates of interest and payment periods different from those stipulated in this section, and in this event, these contractual provisions shall control, provided the requirements of Section 29‑6‑30 and this section are specifically waived, by section number, in conspicuous bold‑faced or underlined type. In case of a wilful breach of the contract provisions as to time of payment, the interest rate specified in this section shall apply.

HISTORY: 1990 Act No. 426, Section 1.

CROSS REFERENCES

Application of this chapter, see Section 29‑6‑60.

Library References

Improvements 4.

Westlaw Topic No. 206.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 8, Payment.

Notes of Decisions

In general 1

1. In general

General contractor from whom university had withheld portion of payment for construction project on university’s campus was not entitled to interest from university on unpaid balance due to general contractor under the general interest statute, as the parties had contracted for a different rate of interest. EllisDon Const., Inc. v. Clemson University (S.C. 2011) 391 S.C. 552, 707 S.E.2d 399. Interest 36(1)

**SECTION 29‑6‑60.** Application of chapter.

 The provisions of this chapter do not apply to:

 (1) residential homebuilders;

 (2) improvements to real property intended for residential purposes which consist of sixteen or fewer residential units; or

 (3) private persons or entities owning improvements to real property when the specific improvements are not financed by a nonowner.

HISTORY: 1990 Act No. 426, Section 1.

Library References

Improvements 4.

Westlaw Topic No. 206.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 8:57, State Prompt Payment Acts.

ARTICLE 3

Subcontractors’ and Suppliers’ Payment Protection

**SECTION 29‑6‑210.** Citation of article.

 This article may be cited as the “Subcontractors’ and Suppliers’ Payment Protection Act”.

HISTORY: 2000 Act No. 295, Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 8, Payment.

NOTES OF DECISIONS

In general 1

1. In general

In a subcontractor’s tort or contract action against a government entity pursuant to the Suppliers’ Payment Protection Act (SPPA), the government entity’s liability is limited to the remaining unpaid balance on the contract with the general contractor when the subcontractor notifies the government of the general contractor’s nonpayment; this limitation, however, does not preclude the additional recovery of attorney fees under any applicable statute. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158. Public Contracts 443

A government agency’s failure to secure and maintain statutory bonding as required by the Suppliers’ Payment Protection Act (SPPA) gives rise to a third‑party beneficiary breach of contract action by a subcontractor. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158. Public Contracts 261; States 104

A claim for failure to enforce the bonding requirements of the Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) is not properly brought pursuant to the Tort Claims Act because the Tort Claims Act does not act as a waiver of sovereign immunity when a governmental entity fails to enforce a statute. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158. Municipal Corporations 723

An implied private right of action by a subcontractor against the government exists under the Subcontractors’ and Suppliers’ Payment Protection Act (SPPA), as pertaining to contractor bond obligations attendant to public projects. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158. Public Contracts 433

**SECTION 29‑6‑230.** Subcontractor’s right to payment from party with whom it contracts.

 Notwithstanding any other provision of law, performance by a construction subcontractor in accordance with the provisions of its contract entitles the subcontractor to payment from the party with whom it contracts. The payment by the owner to the contractor or the payment by the contractor to another subcontractor or supplier is not, in either case, a condition precedent for payment to the construction subcontractor. Any agreement to the contrary is not enforceable.

HISTORY: 2000 Act No. 295, Section 1.

Library References

Contracts 105, 221(3), 228.

Westlaw Topic No. 95.

C.J.S. Contracts Sections 27 to 29, 208, 211 to 212, 356, 377, 385, 387 to 391, 442 to 445, 450.

**SECTION 29‑6‑250.** Labor and material payment bond; “governmental body” defined.

 (1) When a governmental body is a party to a contract to improve real property, and the contract is for a sum in excess of fifty thousand dollars, the owner of the property shall require the contractor to provide a labor and material payment bond in the full amount of the contract. The bond must be secured by cash or must be issued by a surety company licensed in the State with an “A” minimum rating of performance as stated in the most current publication of “Best Key Rating Guide, Property Liability”. The governmental body may not exact that the labor and material payment bond be furnished by a particular surety company or through a particular agent or broker.

 (2) If the contract is for less than one hundred thousand dollars, the governmental body may permit the use of a “B+” rated bond if it justifies that use in writing.

 (3) For the purposes of any contract covered by the provisions of this section, it is the duty of the entity contracting for the improvement to take reasonable steps to assure that the appropriate payment bond is issued and is in proper form.

 (4) For purposes of this section, “governmental body” means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch, and all local political subdivisions. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is procured exclusively by private funds.

HISTORY: Act No. 295, Section 1; 2002 Act No. 253, Section 5; 2002 Act No. 333, Section 9; 2002 Act No. 356, Section 1, Pt VI.P(9); 2013 Act No. 31, Section 13, eff May 21, 2013.

Effect of Amendment

The 2013 amendment, in subsection (4), substituted “Legislative Services Agency” for “Office of Legislative Printing, Information and Technology Systems”.

NOTES OF DECISIONS

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1. In general

Subcontractor’s sole remedy for city’s alleged violation of Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) provision requiring city to ensure that general contractor posted payment bond was common law breach of contract action, rather than tort action. Shirley’s Iron Works, Inc. v. City of Union (S.C. 2013) 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 376; Public Contracts 433

Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) provision requiring city to ensure that general contractor posted payment bond did not provide for a tort cause of action against a city who allegedly failed to ensure such a bond, resulting in general contractor failing to pay subcontractor, and therefore subcontractor’s action against city was barred by sovereign immunity; pertinent sections of SPPA sounded in contract, not tort, and bonding requirement was incorporated into public works construction contracts. Shirley’s Iron Works, Inc. v. City of Union (S.C. 2013) 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 376; Public Contracts 433

Subcontractors and Suppliers Payment Protection Act (SPPA) requirement that government entity which is a party to contract for improvement of real property take reasonable steps to assure that general contractor has been issued appropriate payment bond does not impose upon that entity a continuing duty to ensure that payment bond is in place throughout the course of a project. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2011) 395 S.C. 164, 717 S.E.2d 603. Public Contracts 202

Circuit court’s ruling that South Carolina Department of Transportation (SCDOT) had duty under Subcontractors and Suppliers Payment Protection Act (SPPA) to continuously ensure that general contractor maintained valid payment bond was law of the case, where Supreme Court held in earlier appeal from ruling that SCDOT had duty to secure and maintain bonding under SPPA. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2011) 395 S.C. 164, 717 S.E.2d 603. Appeal and Error 1097(1)

The duty to require payment bonding as set forth under the Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) gives rise to a private right of action against a government entity for failure to ensure that a contractor is properly bonded. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158. Public Contracts 433

State tort claims act did not provide private right to sue state department of transportation for alleged violations of statutes requiring general contractors on state highway projects to provide department with payment bonds in order to protect subcontractors on such projects, precluding action brought by subcontractor against department seeking contractual payment for work on highway project; tort claims act would waive immunity for agencies that were liable for torts in same manner as private individuals, and private individuals could not be liable for the failure to require bonds in government contracts. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C.App. 2006) 368 S.C. 523, 629 S.E.2d 372, rehearing denied, certiorari granted, reversed 377 S.C. 108, 659 S.E.2d 158. Highways 113(5); Public Contracts 433

State statutes requiring general contractors on state highway projects to provide department of transportation with payment bonds in order to protect subcontractors hired on such projects did not constitute a waiver of sovereign immunity, and therefore, subcontractor did not have private right of action against department in seeking contractual payment for work on highway project. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C.App. 2006) 368 S.C. 523, 629 S.E.2d 372, rehearing denied, certiorari granted, reversed 377 S.C. 108, 659 S.E.2d 158. Highways 113(4); Highways 113(5); Public Contracts 433

2. Construction with other laws

South Carolina Tort Claims Act did not govern question of city’s liability for violation of section of Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) requiring it to ensure that general contractor on public building project was properly bonded, in action brought by subcontractors on claims for negligence, breach of contract, quantum meruit, and related claims arising out of contractor’s failure to pay subcontractors for work and materials for project; rather, statute requiring city to ensure that general contractor provided payment bond provided subcontractors with implied cause of action, in both tort and contract, for unpaid balance due. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 348

Trial court’s prior rulings that subcontractors’ claims against city for negligent failure to ensure that general contractor on public construction project had posted payment bond, in violation of Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) and related claims sounded in tort, and therefore, were governed by South Carolina Tort Claims Act, which rulings were not appealed, were not law of case on remand following reversal on appeal of summary judgment in city’s favor, where trial court did not have before it question of whether subcontractors could pursue claim for breach of contract. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Appeal and Error 1195(1)

3. Payments

Genuine issue of material fact remained as to amounts due to subcontractors who provided materials and labor on public construction project, thus precluding summary judgment to city on subcontractors’ action for violation of Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) which required city to ensure that general contractor had posted payment bond, regardless of whether city paid out amounts due to general contractor. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Judgment 181(19)

4. Third party beneficiaries

Subcontractors sufficiently pled third‑party beneficiary claim against city in action stemming from city’s alleged failure to comply with Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) provision requiring city to ensure that general contractor posted payment bond, where, in the “Facts” section of complaint, subcontractors allege they were “third‑party beneficiaries” of the city’s contract with general contractor because the bonding requirements were “legislatively mandated contractual obligations” that were incorporated into the contract as a matter of law, and, while the word “contract” did not appear in the first cause of action, neither did the words “tort” or “negligence.” Shirley’s Iron Works, Inc. v. City of Union (S.C. 2013) 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 376; Public Contracts 433

Subcontractors’ allegation that they were “third‑party beneficiaries of [city’s] Agreement with [general contractor]” on public building project was sufficient to allege claim for third‑party beneficiary breach of contract, in action brought against city under Subcontractors’ and Suppliers’ Payment Protection Act (SPPA), which required city to ensure that general contractor posted payment bond arising out of contractor’s failure to pay subcontractors for work and materials supplied on project. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 376

**SECTION 29‑6‑270.** Credit rating of state in which surety company licensed.

 For any contract for the improvement of real property not covered by the provisions of Section 29‑6‑250, where a payment bond is required by the contract or otherwise, the bond may only be issued by a surety company licensed in the State with a “B+” minimum rating as stated in the most current publication of “Best Key Rating Guide, Property Liability”.

HISTORY: 2000 Act No. 295, Section 1.

**SECTION 29‑6‑290.** Contract provisions not to derogate rights of contractor against payment bond.

 A provision in a contract for the improvement of real property in the State must not operate to derogate the rights of a construction contractor, subcontractor, supplier, or other proper claimant against a payment bond or other form of payment security or protection established by law.

HISTORY: 2000 Act No. 295, Section 1.

Library References

Contracts 129(1).

Westlaw Topic No. 95.

C.J.S. Contracts Sections 229 to 230, 238 to 240.