



Ohio Supreme Court upholds pay-if-paid provisions

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“Condition precedent” sufficient to transfer non-payment risk in subcontracts

The Ohio Supreme Court today held that when a subcontract makes *payment by a project owner to the general contractor a condition precedent to the general contractor’s obligation to pay the subcontractor* — the subcontract contains a valid and enforceable pay-if-paid provision. The case is *Transtar Electric, Inc. v. A.E.M. Electric Services Corp.*, 2014-Ohio-3095 (Ohio Sup. Ct. July 17, 2014).

The issue in the case was whether the use of the term “condition precedent” in a subcontract is by itself sufficient to transfer the risk of the owner’s non-payment from the general contractor to the subcontractor. **The Ohio Supreme Court held that it does.**

Many contractors, in a “belt and suspenders” approach, add redundant language to their pay-if-paid clauses with such provisions as “in agreeing to this condition precedent, the subcontractor assumes the risk of the Owner’s insolvency,” or similar language. The Supreme Court today clearly holds that such additional language is unnecessary: “the use of the term ‘condition precedent’ negates the need for additional language to demonstrate the intent to transfer the risk.”

The Supreme Court’s decision overturns an Ohio Court of Appeals decision that held that the term “condition precedent,” without more, is insufficient to put the subcontractor on notice of the risk of non-payment. Although the subcontract at issue in *Transtar* stated that payment from the owner to the general contractor was “a condition precedent to payment by contractor to subcontractor,” the Court of Appeals held that additional language was required to make it even clearer that the contractor was shifting the risk to the subcontractor. Without that additional language, the Court of Appeals held, the payment provision was as an absolute promise by the general contractor to pay the subcontractor within a reasonable time. The Supreme Court rejected that approach and found that “condition precedent” is plain and explicit enough for a subcontractor to understand that it must look to the owner for payment.

The Supreme Court’s Decision in the *Transtar* case can be found [here](#).

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