

APPELLATE COURT OF MARYLAND

Patriot Construction, LLC v. VK Electrical Services, LLC

Patriot Construction · No. No. 942, September Term, 2021 · Decided March 2, 2023

SUMMARY

The Appellate Court of Maryland affirmed a judgment awarding VK Electrical Services \$64,575.09 for unpaid additional electrical work performed for Patriot Construction. The court held that the subcontract's written-authorization condition precedent was waived through the parties' conduct and the apparent authority of Patriot's project manager. It also held that, under the pay-when-paid provision and the prevention doctrine, the breach action accrued when Patriot received payment from the project owner and refused to pay VK Electrical, rather than when the work was completed.

CASE DETAILS

COURT	Appellate Court of Maryland
WRITING FOR THE COURT	Friedman, J.; Wells, C.J.; Eyler, James R., Senior Judge, Specially Assigned
JURISDICTION	Appellate Court of Maryland
DECIDED	March 2, 2023
DOCKET	No. 942, September Term, 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a bench-trial judgment in favor of a subcontractor in a breach of contract action. The appellant challenged the denial of its motion to dismiss, the finding that a contractual condition precedent had been waived, the statute-of-limitations ruling, admission of alleged parol evidence, and the sufficiency of the trial court's findings.
STANDARD OF REVIEW	In a bench-trial appeal, the appellate court reviews the case on both the law and the evidence; legal questions are reviewed without deference, while factual findings are reviewed for clear error with due regard for the trial court's role as fact-finder. Contract interpretation and the grant or denial of a motion to dismiss are reviewed without deference for legal correctness. Evidence is viewed in the light most favorable to the prevailing party, and a motion to dismiss assumes the truth of well-pleaded allegations and reasonable inferences.

PRECEDENTIAL VALUE	Published and reported opinion of the Appellate Court of Maryland; precedential.
PARTIES	Patriot Construction, LLC v. VK Electrical Services, LLC

TOPICS

conditions precedent waiver of breach contract interpretation preservation of error appellate procedure

PRACTICE AREAS

contracts construction law commercial litigation appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in finding that the written-authorization condition precedent to payment had been waived through the parties' conduct and the apparent authority of Patriot's project manager.
2. Whether VK Electrical's breach of contract claim was barred by Maryland's three-year statute of limitations.
3. Whether the trial court improperly admitted parol evidence concerning the scope of the subcontract.
4. Whether the trial court sufficiently stated its factual and legal reasons under Maryland Rule 2-522(a).
5. Whether the trial court erred in denying Patriot's motion to dismiss for failure to state a claim.

HOLDINGS

1. The trial court properly found that Patriot's written-authorization requirement was waived. The project manager acted with at least apparent authority to direct the additional work, and the parties' subsequent conduct established waiver of the requirement.
2. When a contract contains a pay-when-paid clause making the contractor's receipt of owner payment a condition precedent to payment of the subcontractor, the subcontractor's breach of contract claim for nonpayment does not accrue until the contractor receives the owner payment and refuses to pay.
3. Patriot waived its challenge to the admission of alleged parol evidence concerning whether the fire-alarm work was within the subcontract because the same evidence was admitted without objection at other points and was elicited by Patriot itself.
4. The trial court sufficiently complied with Maryland Rule 2-522(a) because it articulated the factual and legal basis for its decision and the damages award; the rule does not require the court to state every step of its reasoning.
5. The trial court properly denied Patriot's motion to dismiss because the complaint adequately alleged performance or waiver of conditions precedent and did not show on its face that the claim was time-barred.

KEY QUOTATIONS

“We hold, therefore, that the pay-when-paid provision of the contract was a condition precedent to VKES’s ability to seek payment and thus the statute of limitations did not begin to run until that condition was satisfied.” (17)

“When a contract contains a pay-when-paid clause as a condition precedent to payment, a breach of contract action for failure to pay does not accrue until the condition is met.” (14)

FACTUAL BACKGROUND

Patriot, the general contractor on an NSA project at Fort Meade, subcontracted electrical work to VK Electrical Services for \$495,000. During the project, Patriot's project manager directed VK Electrical to perform additional fire-alarm and other ticket work outside the original subcontract, but the work was not authorized through written change orders. The subcontract contained both a written-authorization requirement and a pay-when-paid clause making Patriot's receipt of payment from the owner a condition precedent to its payment obligation. VK Electrical completed and invoiced the additional work in 2016; Patriot received payment for the general contract in October 2019 but later refused to pay the approximately \$64,000 ticket-work invoice, prompting VK Electrical's June 2020 lawsuit.

PROCEDURAL HISTORY

VK Electrical Services sued Patriot Construction in the Circuit Court for Anne Arundel County seeking payment for additional electrical work. The circuit court denied Patriot's motion to dismiss in substantial part, conducted a bench trial, and entered judgment for VK Electrical in the amount of \$64,575.09, plus interest and costs. The Appellate Court of Maryland affirmed.

DISPOSITION

affirmed

CASES CITED

- Clickner v. Magothy River Ass'n Inc., 424 Md. 253, 266 (2012)
- Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc., 165 Md. App. 262, 273, 277-78 (2005)
- Chirichella v. Erwin, 270 Md. 178, 182 (1973)
- All State Home Mortg., Inc. v. Daniel, 187 Md. App. 166, 182 (2009)
- Pradhan v. Maisel, 26 Md. App. 671, 677 (1975)
- Hovnanian Land Inv. Grp., LLC v. Annapolis Towne Ctr. at Parole, LLC, 421 Md. 94, 122 (2011)
- Taylor v. Univ. Nat'l Bank, 263 Md. 59, 63 (1971)
- Hoffman v. Glock, 20 Md. App. 284, 289 (1974)
- Dickerson v. Longoria, 414 Md. 419, 433, 442 (2010)
- Penowa Coal Sales Co. v. Gibbs & Co., 199 Md. 114, 119 (1952)
- Kumar v. Dhanda, 198 Md. App. 337, 342-43 (2011)
- Newell v. Richards, 323 Md. 717, 725 (1991)

- Poole v. Coakley & Williams Const., Inc., 423 Md. 91, 131 (2011)
- Frederick Rd. Ltd. P'ship v. Brown & Sturm, 360 Md. 76, 95 (2000)
- WSC/2005 LLC v. Trio Ventures Assocs., 460 Md. 244, 267 (2018)
- James v. Weisheit, 279 Md. 41, 44 (1977)
- Henry's Drive-In, Inc. v. Pappas, 264 Md. 422, 428 (1972)
- Boyd v. Bowen, 145 Md. App. 635, 669 (2002)
- Jones v. Hyatt Ins. Agency, Inc., 356 Md. 639, 648 (1999)
- Credible Behavioral Health, Inc. v. Johnson, 466 Md. 380, 392-93 (2019)
- Mayor & Council of Federalsburg v. Allied Contractors, Inc., 275 Md. 151, 157 (1975)
- Laurel Race Course v. Regal Constr., 274 Md. 142, 150 (1975)
- DeLeon v. State, 407 Md. 16, 31 (2008)
- Yates v. State, 429 Md. 112, 120 (2012)
- Berry v. State, 155 Md. App. 144, 172 (2004)
- Viamonte v. Viamonte, 131 Md. App. 151, 162 (2000)
- Prahinski v. Prahinski, 75 Md. App. 113, 136 n.6 (1988)
- Shum v. Gaudreau, 322 Md. 242, 243-44 (1991)
- Blackstone v. Sharma, 461 Md. 87, 110 (2018)
- Myers v. State, 248 Md. App. 422, 430-31 (2020)
- Iglesias v. Pentagon Title & Escrow, LLC, 206 Md. App. 624, 644-45 (2012)
- Afamefune v. Suburban Hosp., Inc., 385 Md. 677, 681-82 n.4 (2005)
- Porterfield v. Mascari II, Inc., 374 Md. 402, 414 (2003)
- Greater Towson Council of Cmty. Assocs. v. DMS Dev., LLC, 234 Md. App. 388, 408 (2017)
- Gomez v. Jackson Hewitt, Inc., 427 Md. 128, 142 (2012)
- Litz v. Md. Dep't of Env't, 434 Md. 623, 641 (2013)