

SUPERIOR COURT OF THE STATE OF DELAWARE

Eastern States Construction Service, Inc. v. Darleycap, LLC

Eastern States Construction Service, Inc. v. Darleycap, LLC · No. C.A. No. N21C-07-188 SPL · Decided
December 2, 2025

SUMMARY

This corrected post-trial decision resolves a contract dispute between Eastern States Construction Service, Inc. and several Capano-affiliated development entities concerning heavy civil site-development projects. The court found that both sides breached their contracts, offset their respective damages, and awarded the Developers \$50,189.25. The court declined to award attorneys’ fees to either party.

CASE DETAILS

COURT	Superior Court of the State of Delaware
WRITING FOR THE COURT	Sean P. Lugg
JURISDICTION	Delaware Superior Court
DECIDED	December 2, 2025
DOCKET	C.A. No. N21C-07-188 SPL
DISPOSITION	other
PROCEDURAL POSTURE	Corrected post-trial decision following a six-day bench trial on Eastern States' breach-of-contract and unjust-enrichment claims and Developers' counterclaims for declaratory judgment, breach of contract, and breach of express and implied warranties.
STANDARD OF REVIEW	The parties bore the burden of proving their claims and defenses by a preponderance of the evidence. In the bench trial, the Court acted as factfinder, assessed witness credibility, and weighed the evidence.
PRECEDENTIAL VALUE	Published Delaware Superior Court opinion

TOPICS

- breach of contract
- construction law
- construction defects
- material breach
- damages

PRACTICE AREAS

- contracts
- construction law
- commercial litigation
- remedies

QUESTIONS PRESENTED

1. Whether Developers breached the contracts by failing to pay Eastern States' submitted invoices.
2. Whether the pay-when-paid provision made receipt of third-party funding a condition precedent to Developers' payment obligation.
3. Whether the holdback provision excused Developers' nonpayment.
4. Whether the contracts made time of the essence and whether Eastern States' delays constituted material breaches.
5. Whether Developers' failure to invoke the contractual notice provision barred them from disputing Eastern States' payment applications.
6. Whether Developers elected to continue the contracts after learning of Eastern States' alleged breaches, thereby preserving their obligation to pay for work performed.
7. Whether Eastern States breached the contracts by performing defective work and failing to comply with DelDOT requirements.
8. Whether Developers could recover costs to complete work after terminating Eastern States.
9. Whether Eastern States was entitled to lost profits.
10. Whether Eastern States could recover under unjust enrichment despite the governing contracts.
11. Whether Developers' warranty and declaratory-judgment counterclaims were duplicative of their breach-of-contract claims.
12. Whether either party was entitled to attorneys' fees.

HOLDINGS

1. The pay-when-paid provision established the timing of payment and did not make receipt of third-party funding a condition precedent to Developers' obligation to pay Eastern States.
2. The holdback provision did not permanently excuse Developers' obligation to pay Eastern States for work performed.
3. The contracts did not make time of the essence, and the court would not insert an unwritten time-is-of-the-essence term.
4. Developers did not invoke the notice provision and therefore did not timely dispute Eastern States' payment applications under the contracts.
5. Developers materially breached the contracts by failing to pay Eastern States' submitted invoices.
6. Eastern States breached the contracts by performing defective work and failing to comply with DelDOT requirements, and Developers could recover damages for that defective work.
7. Developers' continued performance and repeated inducement of Eastern States' work after learning of alleged breaches waived any right to treat those breaches as discharging their obligation to pay for work already performed.
8. Developers could recover costs attributable to repairing Eastern States' defective work, but could not recover costs to finish work that Developers prevented Eastern States from completing by terminating it

without the contractual written notice.

9. Eastern States was not entitled to lost profits because its proof was conjectural and speculative.
10. Eastern States' unjust-enrichment claim was dismissed because the parties' relationship was comprehensively governed by valid and enforceable contracts.
11. Developers' express- and implied-warranty claims were dismissed as duplicative of their breach-of-contract claims.
12. Developers' declaratory-judgment claim was dismissed as duplicative of the breach-of-contract claims and, insofar as it concerned future conduct, was unripe.
13. Neither party was awarded attorneys' fees.

KEY QUOTATIONS

“Where, as here, an owner fails to pay their contractor, this Court has adopted the majority view that the contractor must be paid in a “reasonable” time.” (at 32)

“Perhaps nothing is more fundamental to a contract for services than the concomitant obligation to pay for work performed.” (at 39)

“Developers, having waived Eastern States breaches at the time of their occurrence as a matter of course, cannot retrospectively avoid the obligation to pay for that work.” (at 43)

“On the evidence offered here, an award of lost profits would be grounded in guesswork, and the Court can make no responsible estimate.” (at 52)

“The Court, therefore, declines to award attorneys’ fees in this case.” (at 64)

FACTUAL BACKGROUND

Eastern States performed heavy civil site-development and underground-utility work for four entities associated with Capano Management Company under four contracts. The parties repeatedly deviated from contractual procedures, disputes arose over unpaid invoices, delays, and defective work, and Eastern States periodically demobilized from projects. On December 16, 2020, Louis Capano terminated Eastern States from all projects; Eastern States ceased work, and Developers hired another contractor to repair and complete the projects. The court found that Developers owed Eastern States for unpaid work, while Eastern States breached its obligations to perform work in a workmanlike manner and comply with DelDOT requirements.

PROCEDURAL HISTORY

Eastern States filed suit against Darleycap, Springcap II, Willowcap, and St. Annes, alleging breach of contract and unjust enrichment. Developers answered and asserted counterclaims for declaratory judgment, breach of contract, and breach of express and implied warranties. The Superior Court denied Developers' motion to dismiss and motion for summary judgment, conducted a six-day bench trial from July 15 through July 22, 2024, and entered judgment for both sides on their respective breach-of-contract claims, offsetting the awards and entering judgment for Developers in the amount of \$50,189.25 plus prejudgment interest.

DISPOSITION

other

REMAND INSTRUCTIONS

The parties were ordered to prepare and submit a form of final order of judgment by December 31, 2025, consistent with the decision. The final accounting was to credit Developers for specified post-termination payments and overpayments.

CASES CITED

- Navient Solutions, LLC v. BPG Office Partners XIII Iron Hill LLC, 2023 WL 3120644 (Del. Super. Ct. Apr. 27, 2023)
- Feenix Payment Systems, LLC v. Blum, 2024 WL 2768386 (Del. Super. Ct. May 29, 2024)
- Interim Healthcare, Inc. v. Spherion Corp., 884 A.2d 513 (Del. Super. Ct. 2005)
- Torres v. Bishop, 2021 WL 6053870 (Del. Super. Ct. Dec. 21, 2021)
- Pencader Associates, LLC v. Synergy Direct Mortgage Inc., 2010 WL 2681862 (Del. Super. Ct. June 30, 2010)
- Mundy v. Devon, 906 A.2d 750 (Del. 2006)
- Pardo v. State, 160 A.3d 1136 (Del. 2017)
- Active Day OH, Inc. v. Wehr, 2024 WL 3201167 (Del. Super. Ct. June 27, 2024)
- Zenith Energy Terminals Joliet Holdings LLC v. CenterPoint Properties Trust, 2023 WL 615997 (Del. Super. Ct. Jan. 23, 2023)
- Lorillard Tobacco Co. v. American Legacy Foundation, 903 A.2d 728 (Del. 2006)
- Rhone-Poulenc Co. v. GAF Chemicals Corp., 616 A.2d 1192 (Del. 1992)
- New Castle County v. Hersha Hospitality Management, L.P., 2025 WL 1203501 (Del. Super. Ct. Apr. 25, 2025)
- Thomas v. Headlands Tech Principal Holdings, L.P., 2020 WL 5946962 (Del. Super. Ct. Sept. 22, 2020)
- Casey Employment Services, Inc. v. Dali, 1993 WL 478088 (Del. Nov. 18, 1993)
- McAnulla Electric Construction, Inc. v. Radius Technologies, LLC, 2010 WL 3792129 (Del. Super. Ct. Sept. 24, 2010)
- HIFN, Inc. v. Intel Corp., 2007 WL 1309376 (Del. Ch. May 2, 2007)
- Outbox Systems, Inc. v. Trimble, Inc., 2024 WL 1886089 (Del. Super. Ct. Apr. 30, 2024)
- Foraker v. Voshell, 2022 WL 2452396 (Del. Super. Ct. July 1, 2022)
- Shore Investments, Inc. v. Bhole, Inc., 2011 WL 5967253 (Del. Super. Ct. Nov. 28, 2011)
- Eastern Electric and Heating, Inc. v. Pike Creek Professional Center, 1987 WL 9610 (Del. Super. Ct. Apr. 7, 1987)
- August v. Hernandez, 2020 WL 95658 (Del. Super. Ct. Jan. 6, 2020)
- Frunzi v. Paoli Services, Inc., 2012 WL 2691164 (Del. Super. Ct. July 6, 2012)

- Siga Technologies, Inc. v. PharmAthene, Inc., 132 A.3d 1108 (Del. 2015)
- Siga Technologies, Inc. v. PharmAthene, Inc., 67 A.3d 330 (Del. 2013)
- Empire Financial Services, Inc. v. Bank of New York (Delaware), 2007 WL 1991179 (Del. Super. Ct. June 19, 2007)
- Delaware Express Shuttle, Inc. v. Older, 2002 WL 31458243 (Del. Ch. Oct. 23, 2002)
- Fleer Corp. v. Topps Chewing Gum, Inc., 539 A.2d 1060 (Del. 1988)
- State ex rel. Jennings v. Monsanto Co., 299 A.3d 372 (Del. 2023)
- Nemec v. Shrader, 991 A.2d 1120 (Del. 2010)
- Chumash Capital Investments, LLC v. Grand Mesa Partners, LLC, 2024 WL 1554184 (Del. Super. Ct. Apr. 10, 2024)
- Crosse v. BCBSD, Inc., 836 A.2d 492 (Del. 2003)
- RSM US LLP v. Cision US Inc., 2025 WL 819123 (Del. Super. Ct. Mar. 14, 2025)
- Osram Sylvania Inc. v. Townsend Ventures, LLC, 2013 WL 6199554 (Del. Ch. Nov. 19, 2013)
- Loeffler v. MNTN, Inc., 2025 WL 1256148 (Del. Super. Ct. Apr. 28, 2025)
- Blue Cube Spinco LLC v. Dow Chemical Co., 2021 WL 4453460 (Del. Super. Ct. Sept. 29, 2021)
- DuPont de Nemours, Inc. v. Hemlock Semiconductor Operations LLC, 2024 WL 3161799 (Del. Super. Ct. June 10, 2024)
- Paul v. Deloitte & Touche, LLP, 974 A.2d 140 (Del. 2009)
- Connelly v. State Farm Mutual Automobile Insurance Co., 135 A.3d 1271 (Del. 2016)
- DeMatteis v. RiseDelaware Inc., 315 A.3d 499 (Del. 2024)
- In re Delaware Public School Litigation, 312 A.3d 703 (Del. 2024)
- Fortis Advisors LLC v. Boston Dynamics Inc., 2025 WL 1356521 (Del. Super. Ct. Apr. 29, 2025)