

Bond Case Briefs

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PUBLIC CONTRACTS - PENNSYLVANIA

A. Scott Enterprises, Inc. v. City of Allentown

Supreme Court of Pennsylvania - July 19, 2016 - A.3d - 2016 WL 3908965

General contractor sued city for breach of contract seeking to recover its losses caused by city's suspension of public highway project.

The Court of Common Pleas entered judgment for contractor. Both parties appealed. The Commonwealth Court affirmed in part and reversed in part. City appealed.

The Supreme Court of Pennsylvania held that jury finding of bad faith does not require trial court to impose a statutory penalty and award attorney fees under prompt payment provisions of Procurement Code; disapproving *Dep't of Gen. Servs. v. Pittsburgh Bldg. Co.*, 920 A.2d 973, A.G. *Cullen Constr. Inc. v. State Sys. of Higher Educ.*, 898 A.2d 1145, and *Pietrini Corp. v. Agate Construction Co.*, 901 A.2d 1050.

Prompt payment provisions of Procurement Code, providing that the court may award a penalty equal to 1% per month of the amount that was withheld in bad faith, allows, but does not require, the court to order an award of a statutory penalty and attorney fees when payments have been withheld in bad faith, and the court's determinations in this regard are subject to review for an abuse of discretion.

Trial court's explanation in its opinion in support of order, that an award of a penalty and attorney fees under prompt payment provisions of Commonwealth's Procurement Code was unwarranted because general contractor's testimony, respecting damages relating to city's suspension of public road project, was "conflicting", without more, was insufficient to support its outright denial of an award following jury's finding of bad faith in general contractors breach of contract action, warranting remand.