

# **Bond Case Briefs**

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## **CONTRACTS - GEORGIA**

### **City of Atlanta v. Hogan Construction Group, LLC**

**Court of Appeals of Georgia - June 7, 2017 - S.E.2d - 2017 WL 2463930**

Contractor brought action against city for breach of contract and violation of the Prompt Pay Act arising out of a contract for the construction of a fire station.

The trial court denied city's motion for summary judgment. City applied for interlocutory appeal, which was granted.

The Court of Appeals held that:

- Contract did not exceed city's authority under city charter;
- City ordinance requiring approval of certain contract modifications did not excuse city from paying the outstanding balance allegedly owed to contractor;
- Triable issue existed as to whether city exercised good faith in the performance of its obligations under the contract; and
- Contractor was not entitled to interest under the Prompt Pay Act.

Contract between city and contractor for the construction of fire station did not exceed city's authority under city charter, and thus city was not excused from paying the outstanding balance allegedly owed to contractor for its work on the construction project on the ground that the contract was void. City council authorized mayor to enter into contract with contractor for the construction of fire station and an amendment to that contract, and the contract was approved as to form by the city attorney, approved by the city's chief procurement officer, and signed by the mayor, as required by city charter.

City ordinance requiring city council and mayor to approve contract modifications and change orders exceeding ten percent of the "not to exceed" cost of a construction project did not excuse city from paying the outstanding balance allegedly owed to contractor for its work constructing a fire station, even to the extent that payment of such balance would cause total payments to contractor to exceed the "not to exceed" cost of the project by more than ten percent. Ordinance did not specify when approval needed to be obtained, and city had an express contractual duty to consider any claims properly submitted by contractor and an implied duty to consider such claims in good faith.

Genuine issue of material fact as to whether city exercised good faith in the performance of its obligations under contract with contractor for the construction of a fire station, including its obligation to consider any claims for additional payment that would cause payments to contractor to exceed the "not to exceed" cost of the project by more than ten percent, for which city ordinance required the approval of the city council and mayor, precluded summary judgment on contractor's breach of contract claim seeking payment of the outstanding balance allegedly owed to it for its work on the project.

Contractor that contracted with city for the construction of a fire station was not entitled to interest under the Prompt Pay Act on any allegedly late payments by city, where contract included a

provision addressing when progress payments were to be made and providing for interest based on the prime rate for failure to issue progress payments within 60 days of approval, and provision specifically stated that it superseded the Prompt Pay Act.