

11-16-2017

Zumar Industries, Inc. v. Caymus Corp., CA-CV 16-0423, (2017)

The Arizona Prompt Payment Act does not apply to a contractor-subcontractor dispute on a federal public-works project.

The U.S. Department of the Interior, through the National Parks Service, hired Caymus to provide and install road signs in Grand Canyon National Park. Caymus hired Zumar Industries to supply sign panels. After Zumar delivered the panels, the National Park Service voiced concerns about defective and missing panels to Caymus, who in turn notified Zumar. When Caymus submitted its pay application to the Park Service, it paid \$98,800 for the sign panels. In turn, Caymus paid Zumar approximately \$59,000 for the panels but withheld approximately \$36,000 pending Zumar's correction of the defective and missing panels.

Zumar sued Caymus for breach of contract over the unpaid amount. Although Zumar prevailed in arbitration, Caymus appealed. On appeal to the Superior Court, Zumar moved for summary judgment, asserting Caymus violated Arizona's Prompt Payment Act, and the Federal Prompt Payment Act, which were material breaches of the Caymus/Zumar subcontract. The Superior Court agreed and entered judgment in favor of Zumar.

On appeal, Caymus argued Arizona's Prompt Payment Act was inapplicable to a federal public-works project like the Grand Canyon road-sign project. The Court of Appeals agreed holding a *state* prompt-payment act could not be read into the provisions of a *federal* public-works project. Specifically, the state statute definition of "owner" could not be construed to include the federal government or its agencies. The prompt-payment statute's rights, responsibilities, and remedies expressly depend on the contractual relationship between a statutory owner and its contractor. Accordingly, the prompt-payment statute did not apply to mandate payment from Caymus to Zumar after Caymus received payment from the Park Service.

Similarly, Caymus had not violated the Federal Prompt Payment Act. The federal act is only applicable to "construction contracts" as statutorily defined. Zumar could not demonstrate through credible evidence the prime contract between the National Park Service and Caymus was a "construction contract." Moreover, nothing in the federal act relieves a subcontractor of poor or incomplete performance. Accordingly, Zumar was not entitled to summary judgment under the Federal Prompt Payment Act.

For these reasons, the Court of Appeals reversed the Superior Court's decision, awarded Caymus its reasonable attorneys' fees and costs as the prevailing party on appeal, and remanded the dispute back to the Superior Court for further proceedings.