



No Recoupment Defense to Supplier's Miller Act Claim



We're back on the [Miller Act train](#) here at Musings. Recently, the [Alexandria, VA](#) Federal District Court revisited the issue of whether the failure of a subcontractor to pay its supplier provides a general contractor and its surety with a defense to a Federal [Miller Act](#) bond claim. The short answer is

"No."

In [U.S. ex rel. Thyssenkrupp Safway Inc. v. Tessa Structures LLC](#), ("*Safway*") (23 page PDF), the Court discussed several issues arising from the above stated scenario. In *Safway*, the Plaintiff provided scaffolding to a masonry subcontractor at the FBI facility in [Quantico, Virginia](#). Safway was not paid, and filed the inevitable bond claim. Among other defenses, the surety and the general contractor, Vista Contracting, defended claiming that they were entitled to a recoupment defense for amounts that Vista had to pay out due to its subcontractor's breach of contract.

While implying without deciding that Vista and the Surety could not defend a bond claim by mere reference to the subcontractor's breach of contract when Vista had no contract with Safway, the Court stated that regardless of any alleged breach of contract by the subcontractor, Vista and the surety could not point to any evidence that Safway provided faulty scaffolding. Furthermore, the Court followed prior cases in stating that full payment to a subcontractor is not a defense to a Miller Act bond claim by a supplier (this is contrasted with the payment defense to a [Virginia mechanic's lien](#)).

In short, this case continues the trend in Virginia federal courts of [not allowing set off as a defense to Miller Act bond claims](#) unless there is a direct contract between the general contractor and the bond claimant on the particular project to which the bond applies. I recommend Judge Cacheris' analysis in the *Safway* opinion for a great discussion of these principals.

Because of the various wrinkles in Miller Act bond claim law and the court opinions analyzing them, please contact an experienced [Virginia construction lawyer](#) prior to deciding your best course of action.

Image via [Wikipedia](#).

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