Minnesota Appeals Court Invalidates A Bond Claim Based On Tiny Technicality Sending Subcontractor Industry In A Frenzy

In Safety-Signs-v-Westfield-Insurance-MN-Appeals-Decision, the Minnesota Appeals Court issued a decision that feels clearly wrong. In response, the case was appealed to the state's highest court, and the American Subcontractors Association has submitted an application to file an Amicus Curiae brief requesting that the appeals decision get overturned.

While this case should be overturned - if for no other reason but it being grossly inequitable - it is nevertheless another reminder that lien and bond claim laws are hyper-technical that sometimes require strict compliance.

This post discusses the facts and decision of the case, and why I feel that the American Subcontractors Association's position (and the plaintiff's position) is on the right side of the law.

Facts: Notice of Bond Claim Sent To Primary Business Address of Contractor And Not The Address Listed On The Bond

Safety Signs, LLC was contracted by the Niles-Wiese Construction Company (the general contractor) to perform traffic-control and pavement-marking work on a state project. Safety Signs was unpaid on this project on two occasions and filed two successive bond claims.

When Safety Signs was first unpaid, they sent a notice of non-payment (the bond claim) to Niles-Wiese and its surety, Westfield Insurance Co, by certified mail. The bond claim itself and the method of sending (certified mail) was compliant with the statutory requirements. The mailing to Niles-Wiese was addressed to the company's principle place of business and not the address listed on the payment bond itself. Nevertheless, the mailing was received by both Niles-Weise and Westfield Insurance, and the first payment bond claim was fully paid.

When Safety Signs was unpaid a second time it followed the exact same procedure. Again, the bond claim document was compliant with the statute and sent in the method required. Again, the document was sent to Niles-Weise's principal place of business. The bond claim notice was received by Westfield Insurance, but it was returned as undeliverable. Thereafter, although it was undisputed that Safety Signs performed the work, Westfield refused to pay the bond claim claiming that it was not properly made.

Westfield Insurance argues in the case that the bond claim notice should have been sent to the general contractor's address on the payment bond, and since it wasn't, the bond claim wasn't properly sent.

Decision: Appeals Court Reverses Trial Court And Says The Notice Was Not Compliant With The Law And Therefore Invalid

The trial court initially decided that the bond claim was valid because Safety Signs had "substantially complied" with the statute's requirements. The address where the mailing was sent, after all, was an address where Niles-Weise received mail, and indeed was an address where it received and honored a previous bond claim from the same party on the same project.

The appeals court reversed, however, holding that strict compliance was required and missing. The court relied on Minnesota Statute § 574.31(2)(a):

> No action shall be maintained on a payment bond unless...the [claimant] serves written notice of claim under the payment bond personally or by certified mail upon the surety that issued the bond and the contractor on whose behalf the bond was issued at their address as stated in the bond specifying the nature and amount of the claim and the date the claimant furnished its last item of labor and materials for the public work.

The Minnesota Statute clearly provides that the notice of claim must be mailed to the contractor "at their address as stated in the bond," and it is based on this clear statutory instruction that the appeals court holds that the bonds notice to the contractor's principal place of business address was insufficient.

The appeals court addressed the "substantial compliance" argument, but dismiss it because "Minnesota courts have repeatedly held that 'strict compliance with Section 574.31 is a condition precedent to the brining of an action against a surety on a contractor bond.'"

The appeals court also addressed the argument that the intent and purpose of the statute is to protect laborers and materialmen saying that "although the remedial intent of legislation may be considered, the clear language of a statute cannot be disregarded in the name of pursuing the spirit rather than the letter of the law."

Why It's Wrong: Substantial Compliance Should Be Enough, And The Point Of The Statute It To Notify The Contractor, Not To Jump Through Postal Hoops

Seems like a pretty grim decision, right? It also seems unfair to Safety Signs who did almost everything right, and their mistake of sending it to one correct address instead of another equally correct address is understandable. These things happen. Do they have a shot of getting this case overturned?

I hope so, and the American Subcontractors Association hopes so. In fact, they recently filed an Application to submit an Amicus Curiae with the Minnesota Supreme Court. In addition to justifying why the organization should be allowed to file the Amicus Curiae brief, it also explains why the Supreme Court should intervene, citing a quote from a decision cited by the appeals court in the Safety Signs case used to justify rejecting the "substantial compliance" plea:

> In Spetz [& Berg, Inc. v. Luckie Construction Co. Inc.], it had "reluctantly" held that strict compliance was necessary after noting that "although it appears that substantial compliance doctrine should be extended to Section 574.31 and public project bonds, that is for the Minnesota Supreme Court to decide..."
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> The public policy implications caused by the Decision contravenes the intent of the act, affects the small and mid-sized businesses that will suffer severe harm and prejudice from such an interpreation..., and would create an incentive for collusion between the surety and the contractor to (as occurred here) list different notice addresses for the contractor in the subcontract and bond, and then refuse to accept certified mail service of claims.

The American Subcontractors Association is right-on with its position here.

Legally speaking, the substantial compliance doctrine should be extended to these types of arguments. The purpose of the act is to protect contractors and suppliers, and the purpose of the notice is to provide notice. The legislature clearly was not trying to make contractors and suppliers

push a camel through the eye of a needle to get a claim filed; to the contrary, they just were interested in making sure the contractor and surety got proper notice. Sending the claim to the contractor at their ordinary business address, where they can and do receive mail, should be sufficient and substantially compliant.

Practically speaking, however, the American Subcontractors Association is right to be concerned about collusion between the sureties and contractors. These parties will do everything they can to trip up contractors and suppliers in the filing of these claims, and they are typically the more sophisticated parties on a project.

More than collusion, the courts should also consider just how accessible the payment bond is on a construction project. We've filed a lot of bond claims and we've made a lot of requests (on behalf of suppliers and subcontractors) to obtain a copy of the payment bond on a project. A ton of these requests go unanswered. It is sometimes very, very difficult to get a copy of the payment bond despite laws requiring this information be easily obtained.

A savvy surety and contractor would simply drag their feet in providing a copy of the payment bond, which is another form of collusion and another way that a decision like Safety Signs could carry unfortunate public policy implications.

Read this post on the Lien Blog at:

http://www.zlien.com/blog/?p=9308