



The Construction Advisor

A Construction Law Publication of Lang Baker & Klain, PLC

Lang Baker & Klain, PLC

April 2008



Kent A. Lang

[Return to the
Construction Advisor Index](#)

[Subscribe to the
Construction Advisor](#)

[Home Page](#)

The information contained in this newsletter is intended as general information and not as legal advice. If you have a question or are involved in a legal matter related to this or any other topic, please consult with an attorney experienced in that legal field.

Court Reaffirms Strength of Arizona Prompt Payment Law

Dissatisfaction with non-invoiced work does not entitle an owner to withhold payment when invoiced for other work

A 2007 Arizona Court of Appeals decision in *Stonecreek Bldg. Co., Inc. v. Shure* provides a refresher course on the state's prompt payment law and the protections it offers contractors. The case involves property owners – Mavis Shure and her husband, Lanny Hecker – who wished to build a custom home. They hired Stonecreek Building Co. as their general contractor.

During construction, the owners complained to Stonecreek about defective workmanship, particularly in the masonry work. When Stonecreek assured the owners that it would not pay the masonry subcontractor until the work was corrected to their satisfaction, the owners continued to make timely progress payments. The quality of the masonry work continued to be an issue, to the point that the owners' attorney sent a letter to Stonecreek expressing their dissatisfaction. The letter also was critical of the HVAC work that had been done.

A few days later, Stonecreek sent the owners an invoice for \$122,447. The invoice, which had been approved by the architect, covered a variety of work, including the HVAC system. The invoice did not include charges for masonry work.

The owners, alleging deficiencies in the masonry and HVAC work, withheld \$100,000 from their payment, setting in motion a series of predictable consequences:

- Stonecreek stopped its work on the residence.
- The owners, claiming that Stonecreek failed to remedy deficiencies in construction, terminated the contract.
- Stonecreek sued the owners.
- The owners counter-sued Stonecreek.

In its suit, Stonecreek claimed that the owners violated Arizona's prompt payment law (A.R.S. §§ 32-1129 to -1129.06) by withholding payment from an invoice because of dissatisfaction with masonry work that was not covered by that invoice. The contractor also claimed that the owners

had approved its invoice, either because of the architect's approval or because it had been "deemed approved" because the owners failed to file a timely written objection to the work that the invoice covered.

The owners, through their attorney's letter, had disputed the quality of both the HVAC and masonry work. However, of those two issues, only the HVAC work (for which the owners were billed \$26,781) was included in the invoice. The masonry work was not.

Stonecreek filed a motion for partial summary judgment, and the trial court granted it. In granting the motion, the court ruled that, while the letter from the owners' lawyer satisfied the statutory requirement of a timely written objection, the prompt payment law allows an owner to withhold payment only to the extent that the owner disapproves work included in the invoice.

As damages for the owners' violation of the prompt payment law, the trial court awarded Stonecreek \$73,219 – the \$100,000 that the owners withheld from their payment, minus the \$26,781 for the properly disputed HVAC work.

Appeal. The owners appealed the trial court's award. The owners and Stonecreek agreed that the only issue to be determined was whether the prompt payment law allows an owner, when presented with an invoice, to withhold payment related to work that is not included in that invoice.

It is the stated purpose of the prompt payment law "to establish a framework for ensuring timely payments from the owner to the contractor and down the line to the subcontractors and suppliers whose work has been approved."

According to A.R.S. § 32-1129.01(A), an owner must make progress payments to a contractor "on the basis of a duly certified and approved billing or estimate of the work performed and the materials supplied during the preceding thirty day billing cycle." Those payments are to be made within seven days after the date the billing or estimate is certified and approved. The statute goes on to state:

"A billing or estimate shall be deemed approved and certified fourteen days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent prepares and issues a written statement detailing those items in the billing or estimate that are not approved and certified."

In their appeal, the owners argued in part that they were entitled to withhold payments for work other than that billed in the invoice, because some defects in workmanship may become known only after payment has been made.

On that point the Court was sympathetic but unswayed. The Court noted that, when it comes to latent defects, withholding payment is not an owner's only remedy:

"The owner retains all civil remedies for breach of contract and tort claims against a contractor. Certification of payment given during the course of construction is not regarded as conclusive that the

work was properly performed. ... [And] progress payments do not constitute acceptance of work that is not in accordance with contract requirements.”

In the end, to the question of whether the prompt payment law allows an owner to withhold payment related to work that is not covered by the invoice, the Court of Appeals offered a resounding “no,” ruling that, in keeping with the purpose of the law, “the trial court correctly held that withholding funds for allegedly defective work not covered in the invoice violated the Act.”

[Subscribe](#) | [Article Index](#)

[Services](#) | [Publications](#) | [Attorneys](#) | [Contact Us](#) | [Sitemap](#) | [Home](#)

© 1999-2010. Lang Baker & Klain, PLC • 8767 E. Via de Commercio, Suite 102 • Scottsdale, AZ 85258 • 480-947-1911

The act of visiting or communicating with Lang Baker & Klain, PLC, via this website or by email does not constitute an attorney-client relationship. Communications from non-clients via this website are not subject to client confidentiality or attorney-client privilege. Further, the articles, discussion, commentary, forms and sample documentation contained in this website are offered as general guidance only and is not to be relied upon as specific legal advice. For legal advice on a specific matter, please consult with an attorney who is knowledgeable and experienced in that area.