

The Saiber Construction Law Column: July/August 2022

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The June 2022 edition of *OnSite Magazine* discussed the case of *J&M Interiors v. Centerton Square Owners*, which addressed a subcontractor's right to be paid under New Jersey's Prompt Payment Act ("PPA"). Several months after issuing its *J&M Interiors* decision, the Appellate Division handed down another decision which similarly demonstrated that the PPA is a powerful tool contractors and subcontractors can use not only to get paid but also to recover attorneys fees.

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In *Jhc Indus. Servs., LLC v. Centurion Cos., Inc.*, the trial court ruled in favor of Jhc, a subcontractor, after it sued the general contractor for failing to pay Jhc in full even though the general contractor had been paid for the work done by Jhc. After prevailing on its claim against the general contractor, Jhc sought attorneys fees in the amount of \$104,670.51 pursuant to the fee-shifting provision of the PPA. However, the trial judge only awarded Jhc fees and costs of \$16,375.73 because the judge believed the amount of fees sought by Jhc was disproportionate to the \$30,500 judgment it recovered against the general contractor.

The Appellate Division reversed, rejecting the trial court's conclusion that the amount of fees awarded had to be proportionate to the amount of damages won. The appellate court noted that the Supreme Court of New Jersey held in 1995 that New Jersey's fee-shifting statutes did not "require proportionality between damages recovered and counsel-fee awards even if the litigation . . . vindicates no rights other than those of the plaintiff."

The Appellate Division succinctly summed up its decision as follows: "Statutory fee-shifting provisions are intended both to punish and deter the conduct the statute interdicts, here failure to promptly pay a subcontractor the full amount owed; let the non-paying contractor beware." The appellate court sent the matter back to the trial court with clear instructions as to how Jhc's award of legal fees should be determined, including consideration of how the general contractor ran up Jhc's legal fees by its own legal maneuverings and stubborn approach to the action. In so holding, the Appellate Division put real teeth in the PPA and gave Jhc an actual rather than a hollow victory.

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Each issue's Legal Construction Column will discuss a recent decision by New Jersey courts or courts from other states which may be of interest to people in the construction industry.

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