



American Subcontractors Association, Inc.

NEWS RELEASE

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ASA Defends Texas Subcontractors' and Suppliers' Rights as Creditors

ALEXANDRIA, Va. — Texas construction subcontractors and suppliers extend hundreds of millions of dollars' worth of credit by funding labor, materials and equipment for projects before they receive payments for their work, but an appeal before the 5th Circuit U.S. Court of Appeals could make extending such credit a more difficult choice. In *John Patrick Lowe v. Palmetco, Inc.*, a bankruptcy trustee (Lowe) is claiming that he should be able to recoup funds paid to a reinforcing steel supplier (Palmetco) by a bankrupt contractor. In a Nov. 28, 2007, friend of the court brief funded by the Subcontractors Legal Defense Fund (SLDF), the American Subcontractors Association (ASA) pointed out that, if the trustee's appeal is successful, subcontractors and suppliers could be stripped of the funds received for their work after mechanic's lien claim filing deadlines have passed, dramatically increasing the risks of extending credit to others in the Texas construction industry.

ASA's brief supports a June 28, 2005, decision by the U.S. Bankruptcy Court for the Western District of Texas granting Palmetco the right to keep the funds it earned. In the original case, a building slab contractor paid the balance of what it owed Palmetco with three payments totaling \$39,810.50. Within 90 days of the payments, the building slab contractor filed for Chapter 7 bankruptcy. Palmetco followed a common industry practice after receiving final payment of releasing its lien claims against the property on which it had performed work.

For Lowe's claim to be successful, Lowe would have to show that Palmetco received more funds from the contractor than it could have received under a Chapter 7 liquidation. In its brief, ASA argued that Lowe failed to meet this burden of proof. ASA argues that Texas law assures Palmetco of the right to claim the total amount of funds it received for work completed. ASA's brief points out: "This statutory scheme (the mechanic's lien statute, Tex. Prop. Code § 53.151(a), and the Construction Trust Funds Act) makes it clear that the state property law in Texas treats construction funds differently from any other type of property. Texas law envelops construction trust funds and insulates them from claims of unrelated creditors, and controls their use to pay suppliers and subcontractors, because once they are released by the owner to the contractor, the lien claimant is unprotected."

(MORE)

The SLDF is funded entirely by voluntary contributions, and is earmarked for cases where ASA determines that important legal precedents affecting subcontractor rights are at stake. For more information, visit the ASA Web site at www.asaonline.com or call ASA at (703) 684-3450. On the Web site, click on "Subcontractor Advocacy" and then on "Subcontractors Legal Defense Fund."

Founded in 1966, ASA amplifies the voice of, and leads, trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. ASA's vision is to be the united voice dedicated to improving the business environment in the construction industry. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, and integrity and membership diversity.

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