

# CONSTRUCTION LAW NEWSLETTER

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## TRENDS IN CONSTRUCTION LAW

Joint payment agreements are nothing new in the construction industry. They typically provide for the general contractor, subcontractor and supplier to enter into an agreement by which the parties agree that the general contractor will make checks jointly payable to the subcontractor and supplier until such time as the supplier is paid in full.

This arrangement can be beneficial for all parties concerned because it ensures that construction trust

funds are being paid to the proper parties and avoids bond claims, mechanic's liens and labor law claims at a later date.

With the continuing proliferation of MWBE contractors in New York State, the importance of joint payment agreements has been amplified.

Because an MWBE adds an additional contracting party to the payment chain, it could result in the loss of lien and bond claim rights on public projects for subcontractors and suppliers.

A joint payment agree-



ment can ensure that a party who has no lien or bond rights on the project is assured of payment.

## CASE LAW UPDATE

On December 22 2017, the Fourth Department Appellate Division decided the case of *Frank J. Marinacci, Inc. v. Reardon*. The case involved a contractor who was found to have violated the prevailing wage laws by mis-classifying workers.

The contractor chal-

lenged the Dept. of Labor determination by filing an Article 78 action in Supreme Court. The Supreme Court upheld the Dept. of Labor determination and the Fourth Department Appellate Division affirmed.

In so holding, the court stated: "the record establishes that petition-

ers are experienced contractors, that they were aware of the prevailing wage laws, and that [petitioners] deliberately attempted to circumvent the application of those laws to the employees at issue."

**Jordan R. Pavlus, Esq.**  
Email: [jpavlus@bcplegal.com](mailto:jpavlus@bcplegal.com)

**Zea M. Wright, Esq.**  
Email: [zwright@bcplegal.com](mailto:zwright@bcplegal.com)



**Byrne, Costello & Pickard, P.C.**

**ATTORNEYS AT LAW**

**Tower I, Suite 1600  
100 Madison Street  
Syracuse, New York 13202**

**PHONE 315/474-6448  
FAX 315/424-8556**

**Website: [www.bcplegal.com](http://www.bcplegal.com)**

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