

Michigan Builders Trust Fund Act; **Avoid Civil and Criminal Penalties**

The Michigan Builders Trust Fund Act (“MBTFA”), was enacted to ensure that subcontractors and suppliers were compensated for their labor and materials provided to a specific construction project. In general, the MBTFA secures payment for those lower tiered subcontractors and suppliers. The MBTFA is also used to prevent the commingling of funds between unrelated construction projects. Enforcement of the MBTFA could result in the imposition of civil and/or criminal penalties. Specifically, a felony criminal conviction under the MBTFA could result in a fine between \$100.00 and \$5,000.00 and/or imprisonment between six (6) months and three (3) years in state prison; MCL 570.152.

It is possible that the terms of your construction contract and the MBTFA are contradictory with one another. Perhaps the most common scenario would involve a dispute between a contractor and subcontractor regarding the workmanship of the labor or materials provided. Commonly, a construction contract will include a provision that allows the contractor to withhold payments to the subcontractor in order to coerce the subcontractor to remedy any defective work or to secure future performance. However, if the contractor has already received the funds that were intended for the subcontractor, and the subcontractor has made a request for payment for services rendered, then possibly the contractor has violated the MBTFA. Therefore, even if you are within your rights pursuant to the construction contract it is possible that you are violating the MBTFA.

Disputes regarding non-payment for labor or materials can escalate quickly. Typically, in these situations tensions are high and poor decisions are made. In order to comply with the MBTFA while protecting your contractual rights, you should contact an experienced attorney at the earliest signs of a dispute.

Zacharia S. Bonham is an attorney at JKY Legal Group, P.C., focusing primarily on Commercial Litigation, Construction Law, Employment Law, and Business Law. He can be contacted for any questions related to this article or other areas of law at zac@jkylegal.com or (517) 381-2663.

ATTORNEYS AT LAW

Christopher M. Kroll | Adil Daudi | Zacharia S. Bonham | Matthew S. Nowak
4121 Okemos Rd. Suite 10 | Okemos, Michigan 48864
Tel: (517) 381-2663 | Fax: (517) 381-9775
www.jkylegal.com