

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-003753

08/30/2019

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
D. Tapia
Deputy

LANDMARK TOWERS CONDOMINIUM
ASSOCIATION

STEVEN R BEEGHLEY

v.

INTEGRITY BUILDERS GENERAL
CONTRACTORS INC

EVERETT S BUTLER

NELSON A F MIXON
TROY B STRATMAN

MINUTE ENTRY

The Court has “Truesdell’s Motion for Summary Judgment Re: Nonpayment,” filed May 15, 2019 and fully briefed as of August 13, 2019. No oral argument is necessary.

A.R.S. § 32-1129.02(B) states, “If a subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the contractor shall pay to its subcontractors or material suppliers and each subcontractor shall pay to its subcontractors or material suppliers, within seven days of receipt by the contractor or subcontractor of each progress payment, retention release or final payment, the full amount received for such subcontractor’s work and materials supplied based on work completed or materials supplied under the subcontract.” According to this language, the contractor must indeed pay the subcontractor, but the time in which it must be paid does not begin until the contractor has received the pertinent progress payment, retention release, or final payment.

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The statute does not say if its provisions can be modified by contract. The language of this contract, though, contains its own ambiguity as to the date of payment. “The contractor agrees to pay the Subcontractor for Completed work within 30 days from invoice date and/or when the payment from the owner has been received for such work.” The import of “and/or” is uncertain, as is whether the earlier or the later of the two dates controls. It must be left to the factfinder to resolve the ambiguity.

ACCORDINGLY, the Motion for Summary Judgment is **denied**.