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Feature

***28 PAY NOW OR PAY MORE LATER: THE CURRENT STATE OF THE LAW ON UNDISPUTED
CONSTRUCTION OBLIGATIONS**

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Unlike disputes arising out of many other contractual relationships, often those disputes relating to a construction project are complicated by the fact that all involved parties will not necessarily be in privity with each other. In fact, it is customary for several layers of separation to exist between those persons or entities actually performing labor or providing materials and the owner. For example, the general contractor, architect, or engineer may each contract directly with the owner. In turn, the general contractor may then contract with any number of subcontractors, who may themselves contract with one or more sub-subcontractors. But there always exists one constant: The owner is generally responsible for making payment when due in connection with labor, services, or materials provided for a particular project.

When payment is made, it will often be made directly to whoever is in privity with the owner. What happens, however, after the owner pays and that payment does not make it to the provider of the labor, services, or materials? The answer to this question and the rights of the parties differ greatly depending upon whether the amount in question represents a "disputed contract obligation" or an "undisputed contract obligation."

This article will explore that distinction, focusing specifically on the statutory remedies available for the immediate recovery of any undisputed amounts, as well as the risk associated with delaying payment of such undisputed amounts. Suggestions will be offered for the provider of labor, services, or materials to investigate and expedite recovery of those amounts that are undisputed.

Overview of Florida Legislation

F.S. Title XVIII, Ch. 255 addresses various matters regarding public property and publicly owned buildings. Included among Ch. 255's provisions is § 255.071, entitled "Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects." This statute provides, in part, as follows:

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements.

(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days [\[FN1\]](#) after the date the labor, services, or materials were furnished and payment for such labor, services, or materials became due, or within 30 days after the date payment for such labor, services, or materials is received, whichever last

occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).

The above language mandates that anyone receiving payment from a public entity or authority in connection with labor, services, or materials for work done on a public project is statutorily obligated to pay to the provider of the labor, services, or materials the undisputed contract obligations. Failure to pay within 30 days following the later of either the date when the labor, services, or materials were furnished and payment became due, or the date payment was received, entitles the provider *30 to various statutory remedies.

The available remedies include: 1) an accounting of the use of any such payment; 2) a temporary injunction against the person who received such payment; 3) prejudgment attachment against the person who received such payment; [FN2] and 4) such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law. [FN3] This final provision is essentially a catch-all and would certainly include entry of a judgment for the undisputed contract obligation. [FN4] While these remedies must be granted without regard to any other remedy at law and without regard to whether irreparable damage has occurred or will occur, [FN5] the statutory remedies are unavailable either to the extent of a bona fide dispute [FN6] regarding any portion of the contract price, or in the event the plaintiff has committed a material breach of the contract which would relieve the defendant from its obligations under the contract. [FN7] Finally, the prevailing party in any proceeding brought pursuant to [F.S. § 255.071](#) is entitled to recover costs, including reasonable attorneys' fees, at trial and on appeal. [FN8]

Since, by its own terms, [F.S. § 255.071](#) applies only to construction contracts for public projects, it provides no benefit to subcontractors, sub-subcontractors, materialmen, and suppliers who perform work on privately owned projects. Instead, and unlike the providers of labor, services, or materials for public projects, [FN9] those parties performing work on privately owned projects derive various rights from the provisions of Florida's Construction Lien Law (F.S. Ch. 713). [FN10] Through [F.S. § 713.346](#), the Florida Legislature has provided similar rights to subcontractors, sub-subcontractors, materialmen, and suppliers performing work on private projects as those provided by [F.S. § 255.071](#). In fact, while the statutory section is different, the entitlement to any undisputed contract obligation, and the remedies available in the event of a failure to timely pay such an undisputed obligation, are identical for those performing work on private projects and public projects. Accordingly, cases interpreting one of the statutory provisions should be persuasive in interpreting the other. [FN11]

Pursuing Claims Under [F.S. § 255.071](#) and [713.346](#)

- Procedures Set by Statute

The requirements for pursuing a claim under [F.S. § 255.071](#) are set forth clearly by the statute itself. Specifically, the person providing the labor, services, or materials may file a verified complaint alleging the following: 1) the existence of a contract for providing such labor, services, or materials to improve real property; 2) a description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract; 3) the amount of the contract price; 4) the amount, if any, paid pursuant to the contract; 5) the amount that remains unpaid pursuant to the contract and the amount thereof that is undisputed; 6) that the undisputed amount has remained due and payable pursuant to the contract for more than 30 days after the date the labor or services were accepted or the materials were received; and 7) that the person against whom the complaint was filed has received payment on account of the labor, services, or materials described in the complaint more than 30 days prior to the date the complaint was filed. [FN12] [F.S. § 255.071](#) further provides that "[a]fter service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice." [FN13] Upon proving each allegation of the complaint, the provider of labor, services, or materials is entitled to the statutory remedies set forth in [F.S. § 255.071\(4\)](#). [FN14]

Similar to an analysis of the available remedies, the underlying requirements and procedures for bringing a claim in connection with a private project and pursuant to [F.S. § 713.346](#) are largely the same as those mandated in connection with a public project and pursuant to [F.S. § 255.071](#). The sole difference is that a claim for payment of undisputed sums due under [§ 713.346](#) for a private project must allege "[t]he existence of a contract, as defined in s. 713.01, [FN15] to improve real property." [FN16]

- Judicial Decisions to Date

Although only three appellate cases to date address the provisions of [F.S. § 255.071](#), they are instructive as to interpretation of the statute, as well as the scope and immediacy of the statutory remedies available.

In [Bared and Co., Inc., v. Landis & Gyr Powers, Inc., 650 So. 2d 633 \(Fla. 3d DCA 1995\)](#), the Third District Court of Appeal was called on to determine whether the provisions of [F.S. § 255.071\(4\)](#) applied retroactively to contracts entered into before the statute's effective date. In concluding that the statute applied retroactively, the court cited cases that made clear its determination that the provisions of [F.S. § 255.071\(4\)](#) are remedial in nature and are to be construed liberally. [\[FN17\]](#)

[Astaldi Construction Corp. v. American Asphalt, Inc., 672 So. 2d 609 \(Fla. 5th DCA 1996\)](#), involved a contract between Astaldi, as contractor, and American Asphalt, as subcontractor, to provide material and labor to build a portion of a roadway in Orange County. Astaldi did not pay American Asphalt everything due upon completion of the job, and American Asphalt sued, invoking the provisions of [F.S. § 255.071](#). While acknowledging that a portion of the contract amount was owed, Astaldi disputed the remainder. Following a summary hearing, the trial court entered a judgment for American Asphalt on the full contract amount. Astaldi appealed, and the Fifth District Court of Appeal reversed, holding that the trial court could enter judgment at the summary hearing only as to the undisputed amounts. [\[FN18\]](#) As to the disputed amounts, the "case must proceed as any other contract lawsuit, with discovery, other pretrial proceedings, and trial." [\[FN19\]](#) This conclusion followed from what the court deemed a "clear reading *31 of the statute" and from due process considerations. [\[FN20\]](#)

The very recent case of [Fence Masters, Inc. v. Zurqui Construction Service, Inc., 28 Fla. L. Weekly 397 \(Fla. 3d DCA 2003\)](#), [\[FN21\]](#) stemmed from a demand made by **Fence Masters**, a subcontractor for the improvement of public property located in Ft. Lauderdale under a contract with Zurqui Construction, as contractor. Following completion of its work, **Fence Masters** claimed it was owed \$165,980.95 under contract. When Zurqui refused to pay, **Fence Masters** filed suit for, among other things, breach of contract.

When discovery revealed that the city had paid Zurqui all monies due for **Fence Masters'** work, **Fence Masters** amended its claims to include a violation of [F.S. § 255.071](#) and sought entry of a final judgment for the amount that was undisputed.

The trial court initially ordered Zurqui to prepare an accounting pursuant to [F.S. § 255.071\(4\)](#). That accounting revealed that the "total amount of damages, including but not limited to liquidated damages, claimed by Zurqui from **Fence Masters** is \$63,000 and no other claims for additional work, liquidated damages, back charges, expenses, warranty work or damages, claims or sums due whatsoever are claimed by Zurqui pertaining to the work of **Fence Masters.**" [\[FN22\]](#) **Fence Masters'** renewed motion for a final judgment was denied, and **Fence Masters** appealed the trial court's nonfinal order. Reversing the trial court, the Third District Court of Appeal held that **Fence Masters** was "entitled to various immediate remedies for the rapid recovery" of the amount of \$95,972.55 which was undisputed. As a "consequence" of its decision, the court remanded with express instructions to the trial court that it enter judgment for **Fence Masters** as to the undisputed contract obligation. Through its ruling and conclusion, the court also implicitly rejected Zurqui's argument that the court lacked jurisdiction to consider the issues raised before the conclusion of the entire case. [\[FN23\]](#)

While no published cases have interpreted the provisions of [F.S. § 713.346](#), the statute itself contains no language indicating that it should be differently interpreted or applied. [\[FN24\]](#) Accordingly, it should receive similar application, [\[FN25\]](#) and the provider of labor, services, or materials on a private project should be equally entitled to swift payment of the undisputed contract obligations. If payment is not timely made, the provider of labor, services, or materials is entitled to "various immediate remedies" for recovery of that amount, including, but not limited to, entry of a final judgment.

- Investigating the Issues

[F.S. § 713.16\(1\)](#) provides that "[a] copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon must be furnished by any party thereto, upon written demand of an

owner or a lienor contracting with or employed by the other party to such contract." [\[FN26\]](#) F.S. § 713.16(5) provides that "[a]ny lienor who has filed a claim of lien may make written demand on the owner for a written statement under oath showing the amount of all direct contracts; the amount paid by or on behalf of the owner for all labor, services, and materials furnished pursuant to the direct contracts; the dates and amounts paid or to be paid by or on behalf of the owner for all improvements described in any direct contracts; and the reasonable estimated costs of completing, according to the terms and specifications of same, any direct contract under which construction has ceased. If known, the actual cost of completion must be provided." [\[FN27\]](#)

Requesting a sworn statement of account is a good first step to confirming underlying contract information, amounts paid, and amounts due even prior to litigation. In addition, nothing prohibits this request from being sent by the lienor even after litigation begins, and the lienor's request is actually an expeditious way to obtain the identified information. While no similar statute exists for work performed on public projects, there is certainly *32 nothing prohibiting the sending of such a request--no harm, no foul.

Once litigation has commenced, information can of course be obtained through the discovery process and pursuant to applicable Rules of Civil Procedure. To that end, key areas of focus may include 1) the terms of the contract between the particular provider of labor, services, or materials, and that party with whom it is in privity; 2) the terms of the contract(s) involving the owner and under which the owner made payment; 3) the terms of any other intermediary contracts in the chain of persons between the provider of labor, services, or materials and the owner; 4) all amounts actually paid by the owner; 5) a quantified amount as to any alleged dispute regarding the labor, services, or materials provided; 6) the factual basis for any alleged disputed amount; and 7) the underlying factual basis for any alleged breach of contract committed by the provider of labor, services, or materials. To that end, the following are simply a few suggestions for areas of discovery inquiry, through either interrogatories or a request for production, to investigate these key areas: [\[FN28\]](#)

Interrogatories:

1. What is the total contract price including change orders for the labor, services, and/or materials provided by [client], which it delivered and incorporated into the project?
2. What is the total amount paid by you to [client] for its labor, services, and/or materials delivered and incorporated into the project by [client]?
3. What amount remains unpaid from you to [client] for labor, services, and/or materials delivered and incorporated into the project by [client]?
4. What amount has the owner of the project paid you for your labor, services, and/or materials, including the labor, services, and/or materials of your subcontractors and suppliers?
5. Of the amount paid to you by the owner of the project, what amount was for the labor, services, and/or materials of [client]?
6. Set forth in detail any amount you allege to be in dispute of the monies paid to you by the owner for the labor, services, and/or materials of [client], and further detail the underlying basis for any such dispute.

Requests for Production:

1. All payment requests submitted by you to the owner.
2. All payments received by you from the owner.
3. Any and all contracts between you and the owner, including any and all change orders or modifications.
4. Any and all contracts between you and [client], including any and all change orders and modifications.
5. Any and all documents relating to any dispute between you and [client] regarding the labor, services, and/or

materials provided by [client].

6. Any and all documents relating to your nonpayment of any amounts paid to you by the owner for the labor, services, and/or materials provided by [client].

Conclusion

[F.S. § 255.071](#) and 713.046 help ensure that parties litigate solely over amounts actually in dispute. As to those amounts not in dispute, the parties are obligated to timely pay or suffer the consequences associated with wrongfully withholding an undisputed contract obligation. [\[FN29\]](#) These consequences can be severe, including, but not limited to, the entry of a swift judgment and an award of attorneys' fees and costs. If relief is denied at the trial court level, an immediate appellate remedy may be available, and attorneys' fees incurred on appeal are similarly recoverable.

In the end, if the matter is properly investigated, there is no reason (except for the recalcitrance of one party) that a provider of labor, services, or materials should not quickly receive payment of any contract obligations over which there is not a bona fide dispute. As for purely stubborn parties, they can at least be made to pay for their dilatory tactics.

[\[FN1\]](#). When dealing with a local government entity, the obligation to pay actually matures within 15 days following receipt of payment. See [Fla. Stat. § 218.735\(6\)](#). While [§ 255.071](#) applies to public agencies beyond just the local government entity, [§ 218.735\(6\)](#) and [255.071](#) should be read in pari materia with one another. See [Joshua v. City of Gainesville, 768 So. 2d 432, 436 n.5 \(Fla. 2000\)](#) ("[I]f from a view of the whole law, or other laws in pari materia the evident intent is different from the literal import of the terms employed to express it in a particular part of the law, that intent should prevail, for that, in fact is the will of the Legislature."). This supports the conclusion that payment is due within 15 days when the owner is a local government entity, and failure to pay within 30 days entitles one to proceed in accordance with [Fla. Stat. § 255.071](#), whether dealing with a local government entity, the state, any political subdivision of the state, or any other public authority.

[\[FN2\]](#). Any prejudgment attachment must proceed in accordance with Fla. Stat. ch. 76, titled Attachment.

[\[FN3\]](#). [Fla. Stat. § 255.071\(4\)\(a\)-\(d\)](#).

[\[FN4\]](#). See [Astaldi Construction Corporation v. American Asphalt, Inc., 672 So. 2d 609 \(Fla. 5th D.C.A. 1996\)](#); [Fence Masters, Inc. v. Zurqui Construction Service, Inc., 28 FLA. L. WEEKLY 397 \(Fla. 3d D.C.A. 2003\)](#).

[\[FN5\]](#). [Fla. Stat. § 255.071 \(5\)](#).

[\[FN6\]](#). Since these two exclusions define the reach of [Fla. Stat. § 255.071](#), as well as [Fla. Stat. § 713.346](#), it merits mention that the statute is silent as to any interpretation of the terms "dispute," "bona fide dispute," or for that matter, as to when a contract obligation is "undisputed." Similarly, the statute does not provide for when a breach by a provider of labor, services, or materials will be deemed a material breach. Under such circumstances, the court must attempt "to ascertain the plain and ordinary meaning the Legislature intended to ascribe to the term[s]," [State v. Darynani, 774 So. 2d 855, 857 \(Fla. 4th D.C.A. 2000\)](#) (citation omitted), and the courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications." [Holly v. Auld, 450 So. 2d 217, 219 \(Fla. 1984\)](#) (emphasis supplied). Essentially, "when the language of a statute is unambiguous and conveys a clear and ordinary meaning, there is no need to resort to other rules of statutory construction; the plain language of the statute must be given effect." [Starr Tyme, Inc. v. Cohen, 659 So. 2d 1064, 1067 \(Fla. 1995\)](#) (additional citations omitted).

[\[FN7\]. Fla. Stat. § 255.071\(6\)\(a\), \(b\).](#)

[\[FN8\]. Fla. Stat. § 255.071\(7\).](#)

[\[FN9\]. Fla. Stat. § 713.01\(25\)](#) defines the "real property" subject to Florida's construction lien law as "the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision."

[\[FN10\].](#) Florida's construction lien law is discussed and written about often. See, e.g., Matthew S. Nelles, [Fraudulent Construction Liens: Willful Exaggeration or Good Faith Dispute?](#), 75 FLA. B.J. 34 (Mar. 2001); Larry R. Leiby, [1998 Changes to Public Works Bonds and Construction Lien Law](#), 73 FLA. B.J. 36 (Aug. 1999); Joel W. Walters, [The 1996 Amendments to the Florida Construction Lien Law](#), 71 FLA. B.J. 16 (Jan. 1997).

[\[FN11\].](#) See [McDougall v. Van House](#), 801 So. 2d 118, 121 (Fla. 2d D.C.A. 2001) (recognizing that where statutes are "by their terms related," they must be "construed together and in a manner which allows them to be harmonized"; "a construction which avoids potential conflict between statutes is to be utilized when possible"); [Allstate Insurance Co. v. Rudnick](#), 706 So. 2d 389 (Fla. 4th D.C.A. 1998) ("[n]othing in the language of section 627.727(1), requires that the term 'available' be accorded any different meaning than [was given] to the same word in [different case], even though that case involved a different statute.")

[\[FN12\]. Fla. Stat. § 255.071\(3\).](#)

[\[FN13\]. Fla. Stat. § 255.071\(4\).](#)

[\[FN14\].](#) See discussion supra for a detailed breakdown of the statutory remedies.

[\[FN15\]. Fla. Stat. § 713.01\(6\)](#) defines a contract as "an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders."

[\[FN16\]. Fla. Stat. § 713.346\(3\)\(a\).](#)

[\[FN17\].](#) Id. This is so even in the face of certain contrary rules of construction. See, e.g., [Golf Channel v. Jenkins](#), 752 So. 2d 561, n.4 (Fla. 2000) (when construing a statute that is in derogation of a common law right and therefore would be construed narrowly, yet that is also remedial and therefore would be construed liberally, the liberal construction prevails).

[\[FN18\]. Astaldi](#), 672 So. 2d at 611.

[\[FN19\].](#) Id.

[\[FN20\].](#) Id.

[FN21]. As one of **Fence Masters'** attorneys before the trial court, and as appellate counsel for **Fence Masters** in connection with the **Fence Masters v. Zurqui** appeal, this author is familiar with both the trial court and appellate court proceedings in that case and the arguments made by both parties as to [Fla. Stat. § 255.071](#).

[FN22]. [Zurqui, 28 Fla. L. Weekly 397](#).

[FN23]. While not discussed in the court's opinion, an issue raised by Zurqui was its claim that the court lacked jurisdiction to review the trial court's order before conclusion of the entire case. While in a different context, and while this author believes that the Third District Court of Appeal correctly exercised jurisdiction in the Zurqui case, it does merit mention that there may be a split of authority as to whether the denial of an alleged right to the immediate possession of property represents an appealable nonfinal order pursuant to [Fla. R. App. P. 9.130\(a\)\(3\)\(C\)\(ii\)](#).

Specifically, in [Twinjay Chambers Partnership v. Suarez, 556 So. 2d 781 \(Fla. 2d D.C.A. 1990\)](#), the court confronted the question of whether the denial of the appointment of a receiver was an immediately appealable nonfinal order. While recognizing that an order appointing a receiver was an appealable nonfinal order pursuant to [Fla. R. App. P. 9.130\(a\)\(3\)\(C\)\(ii\)](#), the court held, in a 2-1 decision, that an order denying the appointment of a receiver was not similarly appealable. [Twinjay, 556 So. 2d at 781-82](#). Adopting the reasoning set forth by Judge Campbell in his Twinjay dissent, the Third District Court of Appeal disagreed, reasoning as follows: "Without dispute, an order granting a motion to appoint a receiver and assign rents is appealable under the above rule. [Interdevco, Inc. v. Brickellbanc Sav. Ass'n, 524 So. 2d 1087, 1088 n.1 \(Fla. 3d D.C.A. 1988\)](#); [Florida Reinvestment Corp. v. Cypress Sav. Ass'n, 509 So. 2d 1352 \(Fla. 4th D.C.A. 1987\)](#) (en banc); [Thunderbird, Ltd. v. Great American Ins. Co., 470 So. 2d 2 \(Fla. 1st D.C.A. 1985\)](#). We are not persuaded by the Second District's reasoning that this result should be any different when, as here, the order denies a motion to appoint a receiver and assign rents, [Twinjay Chambers Partnership v. Suarez, 556 So. 2d 781 \(Fla. 2d D.C.A. 1990\)](#). In both instances, the trial court has passed upon a party's right to immediate possession of property--disturbing the right of possession in one instance and leaving undisturbed the right of possession in the other instance." [Federal Home Loan Mortgage Corp. v. Molko, 584 So. 2d 76 \(Fla. 3d D.C.A. 1991\)](#). Accordingly, the court concluded that a nonfinal order which, inter alia, denied the requirement that a mortgagor "assign all rents collected on the property to either the court-appointed receiver or the court registry" determined a party's right to the immediate possession of property and was appealable pursuant to [Fla. R. App. P. 9.130\(a\)\(3\)\(C\)\(ii\)](#). See also [Florida Discount Properties, Inc. v. Windermere Condominium, Inc., 763 So. 2d 1084 \(Fla. 4th D.C.A.\)](#) (holding that denial of a motion to order association to pay rent into registry of the court pursuant to [Fla. Stat. § 718.401\(1\)\(d\)](#) was an appealable nonfinal order pursuant to [Fla. R. App. P. 9.130\(a\)\(3\)\(C\)\(ii\)](#)).

[FN24]. It should be noted, however, that pursuant to [Fla. Stat. § 713.37](#), the legislature has provided that the construction lien part of the statute "shall not be subject to a liberal construction in favor of any person to whom it applies." No similar statutory mandate applies to [Fla. Stat. § 255.071](#). It remains to be seen what effect, if any, the mandates of [§ 713.37](#) may have on the construction placed upon [Fla. Stat. § 713.346](#) by the courts. In this author's opinion, however, the remedial nature of [§ 713.346](#) is clear and supported by sound public policy, and it should be interpreted in a manner that will further its intended purpose.

[FN25]. See supra note 13.

[FN26]. [Fla. Stat. § 713.16\(1\)](#) creates a cause of action for sustained damages in favor of any person who suffers any detriment as a result of the refusal or neglect to provide the requested copy of the contract or statement, or as a result of any such person's willfully and falsely stating the amount due or to become due if fixed or ascertainable under such contract.

[FN27]. The written demand must include the following warning in conspicuous type in and in substantially the following form: "WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN 30

DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT." See [Fla. Stat. § 713.16](#).

[\[FN28\]](#). The examples set forth are intended simply to cue the reader in certain areas he or she should considering investigating. Since the facts of each case and each dispute are unique, interrogatories or a request for production must be tailored to best obtain information in each particular case.

[\[FN29\]](#). While the rationale behind both [Fla. Stat. § § 255.071](#) and 713.046 would seem apparent, it merits mention that the Supreme Court, in a different context, has recognized the necessity of a subcontractor receiving timely payment from a contractor, even when the owner has not yet paid. See [Peacock Construction Co. v. Modern Air Conditioning, 353 So. 2d 840 \(Fla. 1977\)](#) (recognizing that, in most cases, it is not the intent that payment by the owner to the general contractor is a condition precedent to the general contractor's duty to pay the subcontractor, since "small subcontractors, who must have payment for their work in order to remain in business, will not ordinarily assume the risk of the owner's failure to pay the general contractor").

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