SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0173-21

BIL-JIM CONSTRUCTION COMPANY, INC.,

Plaintiff-Respondent/
Cross-Appellant,

v.

WYNCREST COMMONS, LP,

Defendant-Appellant/
Cross-Respondent.

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Argued March 22, 2023 – Decided November 3, 2023

Before Judges Accurso, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-1421-19.

William L. Gold argued the cause for appellant/cross-respondent (Bendit Weinstock, PA, attorneys; William L. Gold, on the briefs).

Janet Kalapos Corrigan argued the cause for respondent/cross-appellant (Leyden, Capotorto,

Ritacco, Corrigan & Sheehy, PC, attorneys; Janet Kalapos Corrigan, on the briefs).

The opinion of the court was delivered by

ACCURSO, P.J.A.D.

This is a Prompt Payment Act, N.J.S.A. 2A:30A-1 to -2 dispute which defendant Wyncrest Commons, LP contends is time-barred. The trial court agreed, in part, finding plaintiff Bil-Jim Construction Company, Inc.'s claim for $176,079.87 in unpaid progress payments and change orders time-barred, based on Wyncrest's argument that each unpaid invoice constituted a separate claim that accrued when the invoice fell due, as in an installment contract. The court deemed Bil-Jim's claim for $41,691.40 in retainage timely, finding that claim accrued when the Township engineer filed his inspection report approving Bil-Jim's work, not when he dated the document. Because we reject Wyncrest's installment contract theory and conclude Bil-Jim's entire claim on this contract accrued when the engineer filed his report with the Township approving the work, we affirm in part, reverse in part and remand.

Bil-Jim entered into a standard form American Institute of Architects owner/contractor agreement (AIA Document A101-2007) with Wyncrest in November 2010, to perform site work for Wyncrest's seven building, eighty-four-unit apartment complex in East Windsor. Bil-Jim claims it fully

performed but is still owed $217,771.27 on its $1,069,594.12 contract, $41,691.40 of which is retainage.

Wyncrest does not dispute that Bil-Jim performed the work. Wyncrest's argument is that each progress payment due under the AIA agreement had its own six-year statute of limitations as in an installment contract, all of which had run before suit was filed, and that the claim for the retainage accrued, at the very latest, on the day the Township engineer dated his letter to the Township certifying that Bil-Jim's work had been satisfactorily completed, not two weeks later when the letter was received by the Township Clerk, making that claim time-barred as well.

On cross-motions for summary judgment, the trial judge agreed with Wyncrest about the separate statutes of limitations under the AIA agreement, but disagreed the claim for the retainage accrued on the date the Township's engineer dated his letter. Instead, the judge found the retainage claim accrued on the date the Township received the engineer's letter certifying the satisfactory completion of Bil-Jim's work, making Bil-Jim's claim for the retainage timely filed.

The judge thus entered final judgment granting summary judgment to Wyncrest dismissing Bil-Jim's claim for progress payments and change orders

of $176,079.87 due on the contract, awarding judgment to Bil-Jim for the retainage of $41,691.40 with "court interest" as well as counsel fees and interest under the Prompt Payment Act, and denying Wyncrest's claim for counsel fees as a prevailing party under the Prompt Payment Act. There is no accompanying statement of reasons for the court's interest calculations, which both parties claim are incorrect.

Wyncrest appeals arguing it was entitled to summary judgment on the retainage claim, and that the trial court erred in finding the statute of limitations triggered by the Council's receipt of the Township engineer's report and not finding "approval of the inspecting authority" occurred when the certificate of occupancy was issued or on the date the Township engineer signed the letter certifying satisfactory completion of the work. Wyncrest further argues Bil-Jim was not entitled to attorney's fees because it failed to satisfy the requirements of the Prompt Payment Act by never having requested release of the retainage, and Wyncrest satisfied the Act's requirement of an explanation as to why Wyncrest refused to make payment on Bil-Jim's final invoice. Wyncrest further claims Bil-Jim was awarded fees for work on claims on which it did not prevail, that Wyncrest as the prevailing party was entitled

to its fees and costs under the Prompt Payment Act, and the court's interest calculations are incorrect.

Bil-Jim cross-appeals contending defendant Wyncrest's motion for summary judgment on the separate statutes of limitations was improperly granted because full payment was due when the right to receive all amounts called for under the AIA contract accrued, which did not occur, at the earliest, until Bil-Jim's work received "approval of the inspecting authority" on June 18, 2013, when the Township engineer notified the Township Council in writing that Bil-Jim's work had been satisfactorily completed. Bil-Jim further argues it did not receive an explanation from Wyncrest as to why it withheld final payment, and that it is entitled to attorney's fees consistent with the Prompt Payment Act for all the work its counsel performed, including on this appeal, and interest. Finally, Bil-Jim contends the trial court's interest calculations were incorrect, and it was without jurisdiction to enter the October 1, 2021 order because both parties had already filed notices of appeal.[1]

[1] We have considered the parties' procedural arguments regarding the trial court's several orders preceding the October 1, 2021 final judgment, and are satisfied the trial court had jurisdiction to enter the October 1 judgment, the prior orders being interlocutory. The parties' notices of appeal while proceedings remained pending in the trial did not divest the trial court of jurisdiction. See Savage v. Weissman, 355 N.J. Super. 429, 435 (App. Div.

Although the parties' arguments are convoluted, the legal analysis of this simple dispute is straightforward. We find no legal basis for treating the progress payments due under this AIA agreement as we would the periodic payments due under an installment contract. The parties' contract unambiguously states that "[f]inal payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when . . . the Contractor has fully performed the Contract," which the trial court correctly found was on June 18, 2013, with the Township's receipt of its engineer's approval of Bil-Jim's work, triggering release of the retainage. As plaintiff filed its complaint on June 7, 2019, that is within six years of the Township's receipt of its engineer's approval, its complaint for the entire sum due on the contract, including retainage, was timely.

Further, because there is no dispute that Bil-Jim fully performed and Wyncrest failed to pay the $217,771.27 remaining on the contract, for reasons it cannot recollect, although it admits it "received the fair value of its contract," the Prompt Payment Act applies, entitling Bil-Jim to interest, as calculated pursuant to the Act, and reasonable attorney's fees on the claim for

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2002) (declining to extend Rule 2:9-1(a) to include a notice of appeal filed improperly from an interlocutory order).

the retainage as well as on the claim for the unpaid progress payments and charge orders to the extent plaintiff prevails on that claim on remand.

We, of course, review summary judgment de novo, applying the same standard as the trial court, Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021), without deference to legal conclusions we believe mistaken, Nicholas v. Mynster, 213 N.J. 463, 478 (2013), Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). As the parties agreed on the material facts for purposes of the motions, our task is limited to determining whether the trial court was correct as to the legal consequences that flow from those facts. Ibid.

We turn first to the trial court's acceptance of Wyncrest's claim that the parties' AIA agreement is an installment contract. Wyncrest contends that pursuant to § 5.1.3 in Article 5, "Payments," § 5.1 "Progress Payments," which, as modified, requires "[i]nvoices presented on the 15th of the month are due by the 15th of the following month" and "[i]nvoices presented on the 30th of the month are due by the 30th of the following month," triggers the six-year statute of limitations on each invoice Wyncrest failed to pay on its due date in accordance with Metromedia Company v. Hartz Mountain Associates, 139 N.J. 532 (1995).

Metromedia, a tenant in an office complex owned by Hartz, negotiated a side agreement to its lease allowing it to engage its own cleaning service, for which "Hartz would 'pay the monthly amount of $ 2,632.00 directly to [Metromedia's cleaning service] upon presentation of bills.'" Metromedia, 139 N.J. at 533 (alteration in the original). Metromedia, however, paid the monthly bills for over six and one-half years without submitting any of them to Hartz for reimbursement. Id. at 534. When Metromedia finally woke up and sued for reimbursement, Hartz contended Metromedia's claim accrued when it entered into the side agreement and was thus barred by the six-year statute of limitations in N.J.S.A. 2A:14-1. Ibid. Metromedia, on the other hand, contended its cause of action did not arise until Hartz refused its demand for payment. Ibid.

The Court held in "the unusual circumstances" of that case, where the procedure for paying Metromedia's cleaning service "was unclear," it was "possible to view the cause of action as not arising until the rejection of the claims presented by Metromedia to Hartz." Id. at 535. But reasoning that Metromedia's "enforceable right" to sue Hartz for payment "arose immediately upon completion of the cleaning services," the Court employed "the 'installment contract' approach" holding Metromedia's "claims for a monthly

credit accrued on a monthly basis commencing" on the effective date of the parties' agreement. Ibid.

The Court noted "[c]oupons on county bonds due annually, periodic payments for promissory notes, periodic payments under a divorce settlement, and monthly payments under an equipment lease have all been considered installment contracts for the purpose of determining accrual of a cause of action," because in each case "[t]o hold otherwise would allow a claimant to trigger the statute of limitations upon presentation of a claim rather than having the existence of a claim trigger the statute of limitations." Id. at 535-36 (citing Federal Deposit Insurance Corp. v. Valencia Pork Store, Inc., 212 N.J. Super. 335, 338 (Law Div. 1986), rev'd on other grounds, 225 N.J. Super. 110 (App. Div. 1988)).

The progress payments on this construction contract are not at all like annual payments on coupon bonds, periodic payments on promissory notes or under a marital settlement agreement, monthly payments due on equipment leases, or the right to reimbursement for an agreed upon monthly cost of cleaning services. Wyncrest cites no case where a court has applied "the 'installment contract' approach" to progress payments due on an AIA construction contract on thirty-day terms, and we are not aware of one.

The only case on which Wyncrest relies for its contention that because the contract specified a date for when progress payments were "due," "the 'installment contract' approach" of Metromedia must apply is Deluxe Sales and Service, Inc. v. Hyundai Engineering & Construction Co., Ltd., 254 N.J. Super. 370 (App. Div. 1992), involving suit on a sales contract. For a nine-year period, "Deluxe sent parts to Hyundai's factories and plants throughout the world and was paid by drawing on letters of credit based upon amounts itemized in separate invoices." Id. at 372. We held that because each invoice was for a "separate and distinct" transaction, Deluxe had a right to sue for breach of contract each time Hyundai failed to pay an invoice. Id. at 374-75.

The contracts in Deluxe, like the one in Metromedia, are nothing like the parties' AIA contract. Bil-Jim's invoices to Wyncrest were not for separate transactions. Those invoices were applications for "progress payments," that is payments to be made periodically on the presentation of invoices itemizing the work Bil-Jim had performed over the period and the percentage of work that remained to be done, thereby representing partial payments for work on a single construction contract worth over a million dollars.

In addition to the five percent retainage the parties agreed Wyncrest could withhold from each progress payment due, § 5.1.6, the contract

documents provide Wyncrest was free to correct a mistaken payment for an item of work on one invoice by adjusting that item in a subsequent progress payment, and that its payment of any Bil-Jim invoice did not constitute Wyncrest's acceptance of invoiced work not in accordance with the contract documents. § 9.6.6 AIA Document A201-2007 General Conditions of the Contract for Construction. Indeed, § 9.5.1 of the General Conditions makes clear any decision to make payment on an invoice, other than on the final invoice, may be reconsidered and reversed on the owner's subsequent evaluation of the work. The "Final Payment" provision of the contract, § 5.2.1, follows on those terms by providing that "Final Payment constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner . . . when the contractor has fully performed the Contract except for the Contractor's responsibility to correct work."

Those terms make clear beyond doubt that all the invoices and the progress payments on this AIA agreement are part of a single contract and are not separate transactions. Wyncrest does not direct us to any provision of the contract other than § 5.1.6, setting forth when payment is "due," to support its novel argument that this AIA agreement is an installment contract. Leaving aside that it's § 5.1.6 that establishes Bil-Jim's cause of action on any invoice

did not accrue until Wyncrest was required to release the five percent it held back on each one, a clause in a construction contract specifying when progress payments are due does not make the agreement an installment contract giving rise to a new cause of action on every missed payment. See Metromedia, 139 N.J. at 535.[2] Because Bil-Jim's invoices to Wyncrest for the site work it contracted to perform at Wyncrest Commons were applications for interim payments on a single construction project, not separate transactions, the trial court erred in treating this AIA agreement as an installment contract.

We are satisfied, however, that the court correctly defined the date the retainage was due as June 18, 2013, the day the Township received the letter from its engineer certifying that Bil-Jim's work had been satisfactorily completed, and thus partial summary judgment on Bil-Jim's claim for the retainage was properly granted.

The parties specifically modified § 5.1.6 of the AIA contract to provide "[r]etainage to be released upon approval of inspecting authority." Both agree

[2] If any further proof were needed, which there is not, we note the remedy provided in the General Conditions of the contract for a missed payment is not an enforceable right to sue but the right to stop work until payment is received, which will increase the sum due on the contract by the amount of the reasonable costs incurred by the contractor in shutting down and restarting the project plus interest. § 9.7 General Conditions.

the cause of action to recover the retainage accrued on the date of that approval. They also agree the "inspecting authority" was the Township engineer.

Wyncrest's first argument for why Bil-Jim's claim to the retainage is time-barred, presented in the space of a page-and-one-half of its brief, is that approval of the inspecting authority must have occurred before the certificate of occupancy was issued in February 2013, because N.J.A.C. 5:23-2.24(a)(1) provides that issuance of a certificate of occupancy is conditioned on "the completed project . . . [having] been done substantially in accordance with the code" and "that all necessary inspections have been completed," N.J.A.C. 5:23-2.24(a)(3). Wyncrest reasons that because issuance of the certificate of occupancy "could not possibly have occurred without the 'approval of the inspecting authority,'" its issuance is "dispositive proof" that Bil-Jim's claim on the retainage had already accrued.

The trial court rejected the claim, and we find it utterly without merit. Wyncrest can point to nothing in the contract that ties release of the retainage to the certificate of occupancy. Moreover, making an argument that the inspecting authority must have issued an approval before the certificate of

occupancy is not the same as producing competent evidence of such on the summary judgment motion.

The copy of the letter from the Township engineer to the mayor and council attesting to the engineer having inspected "the site improvements associated with this development" performed by Bil-Jim, including "the installation of bituminous pavement, Belgium block curb, concrete sidewalk, storm drains and the stormwater management basin," and declaring the "work . . . satisfactorily completed and . . . in substantial conformance with the approved plans," is dated June 4, 2013. The Township, however, only received the letter on June 18, 2013, two weeks later.

In a fallback position, Wyncrest concedes the engineer's letter is the final approval of the appointing authority and precipitated the Township's August 6, 2013 resolution releasing Wyncrest's performance guarantees in accord with the Municipal Land Use Law, N.J.S.A. 40:55D-53, but insists Bil-Jim's claim for the retainage accrued on June 4, the date of the letter, and not on June 18 when the parties agree it was received by the Township. We agree with the trial court that it is the Township's receipt of the engineer's letter that counts, not the day the engineer penned it.

As already noted, the parties amended § 5.1.6 of their contract to provide that Wyncrest would withhold five percent of each progress payment with that retainage "to be released upon approval of inspecting authority." Both parties agree the "inspecting authority" was the Township engineer. The only dispute is whether the approval occurred on the date of his letter or on the date it was received by the Township. Wyncrest argues the parties bargained for release of the retainage on approval of the Township engineer "not the receipt of his report by the Township [Council]." We agree with the trial court that the obligation of the engineer to communicate his approval to the Council is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163, and any reasonable interpretation of the parties' contract.

N.J.S.A. 40:55D-53 governs performance guarantees for the installation and maintenance of improvements required by a municipal approval or developer's agreement. On a developer's substantial completion of the bonded improvements, it may ask the governing body to have its engineer inspect them to permit the municipality to approve release of the guarantee. See N.J.S.A. 40:55D-53(d). The engineer is then required to inspect the improvements encompassed in the developer's request and "file a detailed list and report, in writing, with the governing body" as to which have been satisfactorily

completed. N.J.S.A. 40:55D-53(d). The governing body must thereafter adopt a resolution "not later than 45 days after receipt" of the engineer's report either approving or rejecting completion of the improvements, and if approving, "authoriz[ing] the amount of reduction to be made in the performance guarantee." N.J.S.A. 40:55D-53(e)(1).

Wyncrest entered into a Developer's Agreement with the Township, which required Wyncrest to post performance guarantees to ensure installation of the bonded improvements "in a manner satisfactory to the Township Engineer," and to establish an engineering inspection fee escrow. The summary judgment record reflects Wyncrest initially requested release of the balance of its performance guarantees in February 2013. In March, the Township engineer, however, advised the Township there were "some issues related to the pavement on One Mile Road that need to be addressed" before he could recommend release of Wyncrest's performance guarantees. The Township thereafter rejected Wyncrest's request on the recommendation of the Township engineer.

Although Wyncrest advised in answers to interrogatories the company had "no recollection or records" as to who performed the work to address the paving issue, an officer of Bil-Jim certified on its motion for partial summary

judgment that Bil-Jim "was contracted to perform the paving work on One Mile Road and did the work." Wyncrest wrote to the Township in early May advising the engineer's concerns about the paving on One Mile Road had been addressed and renewed its request for release of the performance guarantees. Following his re-inspection, the engineer wrote the letter of June 4, received by the Township on June 18, prompting its August 6 resolution to release the balance of Wyncrest's performance guarantees. With that backdrop, we turn to the language of the contract.

The construction of contract language is generally a question of law unless its meaning is unclear and turns on conflicting testimony. Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001). As neither exception applies here, our review is de novo. Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). We owe "no special deference to the trial court's interpretation and look at the contract with fresh eyes." Id. at 223.

"The polestar of contract construction is to discover the intention of the parties as revealed by the language" of their agreement. Karl's Sales & Serv. v. Gimbel Bros., Inc., 249 N.J. Super. 487, 492 (App. Div. 1991). As our Supreme Court has instructed, "[t]he judicial task is simply interpretative; it is not to rewrite a contract for the parties better than or different from the one

they wrote for themselves." Kieffer, 205 N.J. at 223. "Thus, we should give contractual terms 'their plain and ordinary meaning,' unless specialized language is used peculiar to a particular trade, profession, or industry." Ibid. (quoting M.J. Paquet, Inc. v. N.J. Dep't of Transp., 171 N.J. 378, 396 (2002)). An agreement must be construed in the context of the circumstances under which it was entered into, and it must be accorded a rational meaning in keeping with the express general purpose. Karl's, 249 N.J. Super. at 492 (quoting Tessmar v. Grosner, 23 N.J. 193, 201 (1957)).

Applying those principles to this contract, we have no hesitation in concluding the operative date of the "approval of [the] inspecting authority" is June 18, 2013, the date the engineer's approval was received by the Township, not June 4, the date of the letter. The Developer's Agreement required Wyncrest to post performance guarantees to ensure installation of the bonded improvements, consisting almost entirely of work Bil-Jim was contracted to perform, "in a manner satisfactory to the Township Engineer." Wyncrest could not obtain the release of its performance guarantees without the engineer's approval of Bil-Jim's work.

The obvious point of modifying the AIA contract to link release of the retainage to approval of the inspecting authority, was to insure Wyncrest did

not have to release Bil-Jim's retainage until Wyncrest was assured it could obtain the release of its performance guarantees for Bil-Jim's work. The point is well illustrated by what occurred here. When the Township refused to release the balance of Wyncrest's guarantees until it had corrected the engineer's concerns about the paving on One Mile Road, Wyncrest still rightfully possessed Bil-Jim's retainage, providing Bil-Jim an incentive to promptly address the engineer's concerns, thereby allowing Wyncrest to promptly obtain release of the balance of its performance guarantees.

Given that context, it appears clear the parties intended the retainage would be released only on the effective approval of the inspecting authority, which could not occur until the engineer "file[d] a detailed list and report, in writing, with the governing body." N.J.S.A. 40:55D-53(d)(1). Indeed, N.J.S.A. 40:55D-53(d)(1) makes plain Wyncrest did not have "approval of [the] 'inspecting authority'" before the engineer filed his letter with the governing body on June 18, 2013. Prior to its filing with the Township, the engineer's letter was a nullity in the eyes of the statute. See N.J.S.A. 40:55D-53(e)(2) (permitting a developer to file a summary action in the Superior Court to redress the engineer's failure to furnish his report and recommendation to the governing body within forty-five days, and likewise to compel action by a

governing body which has failed to act "within 45 days from the receipt of the municipal engineer's list and report").

As the Municipal Land Use Law does not recognize a municipal engineer's approval until it is filed with the governing body, we likewise construe the contract language that the retainage was "to be released upon [the] approval of the inspecting authority" to mean Bil-Jim's claim to the retainage accrued when the Township engineer filed his letter approving the bonded improvements with the Township on June 18, 2013. If the inspecting authority's approval was only effective on filing, Bil-Jim had no claim to the retainage until the approval was filed. There is no other rational meaning to accord the words of the contract given the statutory meaning of "approval" in these circumstances and the parties' decision to link release of the retainage to approval of the inspecting authority. See Karl's, 249 N.J. Super. at 492.

Wyncrest's claims as to the Prompt Payment Act require only brief comment. Because we reverse the trial court's decision that Bil-Jim's claim to unpaid progress payments and change orders was time-barred, Wyncrest is not a prevailing party. Thus, we need not address Wyncrest's claim that the trial court erred in not awarding it fees pursuant to N.J.S.A. 2A-30A-2(f).

Wyncrest's claims that Bil-Jim was not entitled to attorney's fees under the Prompt Payment Act because Wyncrest "satisfied the Act's requirement of an explanation as to why payments were not made," and Bil-Jim never requested release of the retainage are meritless. § 5.2.1 of the contract provides "Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the contractor has fully performed the Contract except for the Contractor's responsibility to correct work . . . and to satisfy other requirements, if any, which extend beyond final payment."

Wyncrest attested to the Township that all work on the project had been fully performed in its last request for release of the balance of its performance guarantees in May 2013. But because it was not required to release Bil-Jim's retainage until approval of the inspecting authority, full payment was not due Bil-Jim on the contract until the engineer filed his approval of the satisfactory completion of the bonded improvements with the Township on June 18, 2013. On that date, Wyncrest became obligated under § 5.2.1 to pay the unpaid balance of the contract sum, $217,777.27, consisting of $176,085.87 in unpaid progress payments and change orders, and $41,691.40 in retainage.

Wyncrest cannot now say why it failed to pay Bil-Jim for the balance of its work when the Township engineer agreed, in June 2013, with Wyncrest's assessment that the site improvements Bil-Jim was contracted to perform had been satisfactorily completed, and he recommended release of the balance of Wyncrest's performance guarantees. It nevertheless contends an email it sent to Bil-Jim in July 2012 — following Bil-Jim's inquiry about a final punch list for the project and the status of its final invoice mailed May 29, 2012 — stating, in full, that "I am meeting [the engineer] there tomorrow. I will inform you after the meeting," "incontrovertibly explained to [Bil-Jim] in writing why payment was not forthcoming."

Although the email was in writing, it obviously didn't explain anything. It certainly cannot qualify as "a written statement of the amount withheld and the reason for withholding payment," N.J.S.A. 2A:30A-2(a), even if it had been provided to Bil-Jim within twenty days of its May 29 invoice — which it wasn't — so as to avoid the award of interest on the amount due as well as "reasonable costs and attorney fees" to Bil-Jim to the extent it prevails on its claim. See N.J.S.A. 2A:30A-2(c) and (f); JHC Indus. Servs., LLC v. Centurion Cos., 469 N.J. Super. 306, 309 (App. Div. 2021).

As to Wyncrest's claim that Bil-Jim failed to make a claim for the retainage, there is no requirement in the parties' AIA contract or the Act that would require it to do so — leaving aside that it is undisputed Wyncrest never advised Bil-Jim that the inspecting authority had approved its work, triggering Wyncrest's obligation to pay the retainage.

Although we are unsure as to the defenses Wyncrest might have to payment of the outstanding progress payments and change orders given we've ruled Bil-Jim's complaint was timely filed, especially as Wyncrest claims it has no documents or any recollection as to why it failed to pay and admits the work was fully performed and approved by the Township, Bil-Jim did not seek summary judgment on that aspect of its claim.

Accordingly, we simply reverse the judgment to Wyncrest dismissing the claim and affirm summary judgment to Bil-Jim on the retainage. Given our disposition, we need not address the parties' claims that the court's calculation of interest and attorney's fees were incorrect. That aspect of the final judgment is vacated, as all will need to be recalculated on remand following disposition of Bil-Jim's claim for its unpaid progress payments and change orders. The court on remand must fully explain the basis of its

calculations of all sums awarded in accordance with the Act and Rules 1:7-4, 4:42-9 and 4:42-11.

Affirmed in part, reversed in part and vacated in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION