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NEWS RELEASE

FOR RELEASE, September 9, 2009

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ASA Legal Victory Helps Keep Prime Contractors From 'Shopping' Maryland Subcontractors' Contracts

ALEXANDRIA, Va. — Construction subcontractors in Maryland worried that their contracts could be terminated by prime contractors seeking to replace them with cheaper subcontractors have a new legal precedent to challenge such “shopping” of their contracts, thanks to the American Subcontractors Association and its two chapters with members in Maryland, the D.C. Metropolitan Subcontractors Association and ASA of Baltimore. ASA and the chapters jointly filed an *amici curiae* (friends of the court) brief asking the Maryland Court of Appeals to keep subcontracts from being made “illusory and meaningless” by terminations made only for the financial gain of prime contractors, and the appeals court agreed that terminations cannot be made on “a whim.”

In the case of *Questar Builders, Inc. v. CB Flooring, Inc.*, Questar Builders cited a “termination for convenience” contract provision when terminating subcontractor CB Flooring to pursue a deal with another subcontractor offering a lower price for the same work. In an Aug. 25, 2009, decision, the Maryland Court of Appeals told Questar Builders that the “contention that it was entitled to terminate the Subcontract for any reason whatsoever goes too far and is inconsistent with the terms of the Subcontract. To be sure, a right to terminate in the absence of the other party’s breach does not equate necessarily with the right to terminate based on a whim. We shall not read into the Subcontract such unfettered power.”

Questar Builders and CB Flooring signed a \$1.1 million subcontract agreement for carpet and flooring work at a luxury midrise and townhome apartment development in Owings Mills, Md. Months after the subcontract was signed, but before CB Flooring started work on-site, the project’s interior designer distributed drawings reflecting carpet that was different and more expensive than the original contract. When CB Flooring signaled to Questar that it planned to submit a change order to meet the new specifications at a higher price, Questar proceeded to

negotiate a contract for \$1,000 less than CB Flooring's price for the work with another subcontractor that had submitted a bid on the original contract. Questar terminated CB Flooring citing the contractual right to terminate "for convenience," and used the other subcontractor for the project.

A trial court awarded more than \$243,000 in damages to CB Flooring, and Questar appealed.

In February 2009, ASA and its chapters asked the Maryland Court of Appeals to preserve the integrity of construction subcontracts by rejecting opportunistic terminations of subcontractors: "A holding carving ... an exception to the reach of the good faith and fair dealing covenant would not only poison business relationships and eliminate business certainty, but also do great damage to the ability of subcontractors to rely on their signed contracts as a reliable indicator of future work and expected revenues."

The appeals court agreed that terminations for convenience are subject to factors other than the prime contractor's mere desire to end the subcontract: "Questar's right to terminate the Subcontract for convenience ... did not permit it to evade either its obligation to make a good faith (albeit unilateral) determination as to whether CB Flooring was entitled to an equitable adjustment to the Subcontract price."

ASA tapped its Subcontractors Legal Defense Fund to pay the fees associated with its filing in this case. The SLDF supports ASA's critical legal activities to protect the interests of all subcontractors, and is funded solely by contributions. SLDF funds are invested in precedent-setting cases across the country. To learn more about this case and the SLDF, visit www.sldf.net.

The Columbus, Ohio-based law firm of Kegler, Brown, Hill and Ritter prepared ASA's brief in this case.

Founded in 1966, ASA amplifies the voice of, and leads, trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. ASA's vision is to be the united voice dedicated to improving the business environment in the construction industry. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, and integrity and membership diversity.

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