

## Right of Sub-Contractor to Sue Upper Tier Contractor

Article By:

Paul W. Norris

---

In this blog we will explore the basic concept as to when a lower tier contractor can sue an upper tier contractor. The generally well accepted principal of law is that a contractor can only sue a party with whom it has a direct contractual relationship. In other words, unless there is a signed contract between two contractors, an upper tier contractor and a lower tier contractor, the lower tier contractor would not have the right to file suit against the upper tier contractor. Likewise, an upper tier contractor would not have a right to bring a lawsuit against a lower tier contractor with whom it does not have a direct contractual relationship with. In the context of a typical construction project, this rule of law has many different considerations, as discussed below.

If a lower tier contractor has not been paid by the contractor with whom it had direct contractual relationship, it may not file suit against any other contractor above it in the absence of a direct contractual relationship. Typically, this involves a sub-subcontractor who may not have received payment from the subcontractor above it who was retained by the general contractor. Under these circumstances, the sub-subcontractor could only file a lawsuit against its subcontractor with whom it had a direct contract for non-payment. Likewise, an upper tier contractor who hired a subcontractor would not have the ability to file a direct claim against a sub-subcontractor under these same circumstances. This is well accepted contract law and cannot be overcome in the absence of binding contractual provisions.

In general, the only exceptions to a sub-subcontractor proceeding against a general contractor or owner would be if there existed a payment or performance bond with regard to the project. Provided the appropriate notice had been given, a sub-subcontractor may be able to pursue payment from the payment bond. Furthermore, if the sub-subcontractor appropriately filed a construction lien against the commercial property, than in that event, it may proceed on its construction lien claim. This is a right conferred upon a contractor by Statute rather than a contractual relationship, and thus, is an exception to the generally well accepted rule that a contractor can only sue those with whom it has a direct contractual relationship. It should be noted, however, that there is absolutely no exception that an upper tier contractor who does not have a contractual relationship with a lower tier contractor could pursue a direct claim against this party. The only defense that an upper tier contractor could assert would be in the context of a commercial construction lien claim or bond claim by asserting offsets against the amount the sub-subcontractor may be seeking.

National Law Review, Volumess VIII, Number 226

Source URL:<https://natlawreview.com/article/right-sub-contractor-to-sue-upper-tier-contractor>