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BULLETIN

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CONTRACTOR LICENSE OVERVIEW---WITH A TWIST

The California Contractors State License Board provides licenses to contractors and regulates the state's construction activity. The California Business and Profession ("B&P") Code Section 7031 prohibits unlicensed contractors from bringing or maintaining an action to recover compensation in any court in the state of California. Section 7031 also addresses, amongst other issues, recovery from an unlicensed contractor and when proof of licensure is required in a civil suit. In order to recover in a civil action, a contractor must allege that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person. Section 7031 protects consumers who enter into agreements with contractors and promotes the public policy of having licensed, competent, and honest builders. See *Montgomery Sansome LP v. Rezai* (2012) 204 Cal.App.4th 786. However as further examined by the recent case of *Art Womack v. David Angus Lovell et al.* (2015) WL 3658066, Section 7031 also protects the builders and contractors from cagey pleading practices by Plaintiff homeowners.

In a decision published on June 15, 2015, the Fourth District Court of Appeal in *Art Womack v. David Angus Lovell et al.* (2015) WL 3658066, prevented Plaintiff and Respondent, homeowner Art Womack ("Plaintiff"), from "inappropriately" using California ("B&P") Code Section 7031 as a sword and a shield. In brief, the homeowner plaintiff made a motion for nonsuit based upon the general contractor's, Aztec Sunpower ("Aztec"), failure to produce a verified certificate of licensure as required under Section 7031 and upon that basis the trial court granted Plaintiff's motion. However, due to Plaintiff's admission in his Complaint that Aztec was licensed and Plaintiff's failure to list the issue of licensure as controverted prior to trial, the Court of Appeal bound the Plaintiff by his contrary judicial admission in the unverified Complaint and reversed the trial court's ruling.

The initial litigation arose out of a remodel undertaken in 2010 by Plaintiff to his Laguna Hills home. Plaintiff hired Aztec as the general contractor and by January 2011 had already filed an initial complaint. The First Amended Complaint filed in July 2011 alleged Aztec, acting in its capacity as a "licensed contractor," had performed incomplete and substandard work. Part of the reasoning behind alleging that Aztec was licensed at all times was to support a cause of action on the contractor's license bonds. Contrary to the allegations in its operative Complaint, Plaintiff's answer to Aztec's Cross-Complaint generally denied Aztec's allegations, including but not limited to the allegation, that Aztec was a licensed contractor. Three (3) days before trial the parties submitted a joint list of stipulated facts and controverted issues, which did not include any issue regarding licensure of Aztec. During trial, Plaintiff moved for nonsuit based upon Aztec's failure to show proof of licensure in accordance with B&P Code section 7031.

B&P Code Section 7031 subdivision (a) operates to deny access to the courts to contractors who were not licensed at all times during their performance. Subdivision (d) of the same section requires a verified certificate if the issue of licensure is controverted and so can operate to deny even licensed contractors any compensation. The Court of Appeal took the opportunity to apply subdivision (d) to protect the general contractor after being misled to believe that no verified certificate was required in the case. The Court lambasted the Plaintiff and was “not impressed by his attempt to gain a benefit by alleging licensure until his settlement with Aztec’s bond company, then asserting non-licensure in order to scuttle his liability to Aztec.” As a result, the Court reversed the ruling in favor of the Plaintiff and directed the Court to enter judgment for Aztec on its Cross-Complaint.

Attorneys and parties should take special care to pay attention to the details of the case including all of the allegations made and denied by all parties. As Judge Bedsworth states in the beginning of the opinion: “[i]f you dwell on the small details with an eye to fairness, the law works well.” Additionally, contractors must continue to ensure that they are licensed and in good standing with the State Contractor’s board in order to avoid the affirmative defense Plaintiff used in *Womack* to initially bar recovery by Aztec on its Cross-Complaint for Breach of Contract. If you have any questions, as always, please feel free to contact our office.