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Consumer, But Not Unlicensed Contractor, May Enforce Arbitration Clause

By Ronald L. Richman

California law prohibits unlicensed contractors from enforcing claims to payment for work done while unlicensed. But, the customer can seek to enforce the construction contract against the unlicensed contractor. In this instance, a California Court of Appeal decided that a consumer who contracts with an unlicensed contractor could enforce the arbitration clause in the construction contract in order to recover from the unlicensed contractor. *Templo Calvario Spanish Assembly of God v. Gardner Construction Corporation*, 2011 WL 3586481, --- Cal. App. 4th --- (2011).

Templo contracted with Gardner Construction to build a church. The construction contract provided for mandatory arbitration in the event of a dispute between the parties. At the time the construction contract was entered into and during the performance of the project, Gardner was not licensed. A dispute arose. Upon completion of the project, the parties agreed to submit their dispute to arbitration. Because Gardner was unlicensed, the arbitrator ruled Gardner had to disgorge the entire sum it received for the construction project. Templo petitioned the Superior Court to confirm the arbitration award. The Superior Court refused. It vacated the award on the ground the arbitrator lacked authority to render an award because the construction contract was illegal and void due to Gardner being an unlicensed contractor.

The Court of Appeal reversed, holding: 1) the construction contract was not automatically illegal and void; and 2) Templo, the consumer, could enforce the arbitration clause and recover all amounts paid to Gardner, the unlicensed contractor.

In its decision, the Court of Appeal made two key distinctions about the enforceability of a contract with an unlicensed contractor. First, the Court of Appeal decided that California Business & Professions Code § 7031(a), which expressly bars suit (and arbitration) brought by a contractor to collect compensation for *unlicensed work*, does not bar suit by a contractor who was unlicensed at the time it entered into the contract, but was licensed *during performance* of the work. In support of this critical distinction, the Court concluded that "the act of *executing* an agreement is not one for which a contractor seeks compensation; rather, he or she pursues payment for *carrying out* the contract in a satisfactory manner." Therefore, section 7031(a) only acts as a bar to a contractor who is unlicensed during performance of the contract.

Secondly, the Court decided that there was no compelling reason to conclude either the Legislature or public policy intended section 7031(a) to make contracts with unlicensed contractors automatically illegal, void and unenforceable. Rather, the intent of section 7031(a) was to prohibit the contractor from filing suit or compelling arbitration to collect compensation for unlicensed work. Section 7031(b), in turn, expressly allows the consumer to bring an action to recover monies paid to an unlicensed contractor. This section also allows the consumer to initiate any affirmative arbitration claim against the unlicensed contractor.

It is never good practice to hire an unlicensed contractor. Prior to entering into any construction contract, visit the California Contractors State License Board website at www.cslb.ca.gov/. You can check a contractor's license by the license number, by the name of the contractor, or by the owners/officers of the construction company. The site will provide you with the name and



address of the contractor, the type of business (i.e., corporation, limited liability company, sole proprietorship), the license(s) held by the contractor, the amount and issuer of the contractor's license bond, the worker's compensation carrier and the officers/owners of the company.

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