



CALIFORNIA CONTRACTORS BEWARE: YOU MUST BE PROPERLY LICENSED AT ALL TIMES!

Earlier this year, the California Court of Appeal barred a corporate contractor from recovering the damages a jury awarded because the contractor was not licensed. *Great West Contractors, Inc. v. WSS Industrial Construction, Inc.*, 162 Cal.App.4th 581, 76 Cal.Rptr.3d 8 (2008). The court barred the corporation, WSS Industrial Construction, Inc. from recovering notwithstanding its President and Responsible Managing Officer held an individual license, a related WSS partnership held a license, and it had not installed any work on the project before it received its license. While the *Great West* Court merely barred WSS from recovering its damages, the holding in *Great West* should be of great concern to California contractors today under a 2002 amendment to the Contractor's State License Law that renders an unlicensed contractor liable for all amounts paid.

In *Great West*, WSS submitted an application for a contractor's license before it submitted a bid for steel construction work on August 28, 2001, to the general contractor, Great West Contractors, Inc., on a school construction project. WSS executed the parties' subcontract on December 1, 2001, but the license was not issued until December 21, 2001. Prior to the issuance of its license, WSS had only prepared shop drawings, bought and delivered anchor bolts, and submitted pay applications for such work.

After the project, WSS sued Great West and its payment bond surety for damages and statutory penalties. Great West and the surety argued they could not be held liable because WSS was not properly licensed at all times. The trial court disagreed and found substantial compliance with the California Contractor's License Law because WSS's President was licensed and licensure was not required for the acts performed prior to the issuance of WSS' license. The jury awarded WSS over \$220,000 in damages, penalties, and interest.

Great West and its surety argued on appeal that the Contractor's License Law required the corporation itself, not the President, to be licensed at all times WSS performed services under the parties' contract, regardless of whether the acts performed before licensure themselves required licensure. The Court of Appeal agreed, reversed the trial court, and remanded with instructions for entry of judgment in favor of Great West and its surety.

THE 2002 "DISGORGEMENT" AMENDMENT

Since its passage in 1931, the California Contractor's License Law barred a contractor that was not properly licensed at all relevant times from recovering any unpaid compensation or damages. *Cal. Bus. & Prof. Code* § 7031(a). The rule was enacted to support the public policy of protecting the public from unlicensed contractors. *Hydrotech Systems, Ltd. V. Oasis Waterpark*, 52 Cal.3d 988, 995 (1991). In 2001, the California legislature provided even greater support to this policy. Effective 2002 – prior to the parties in *Great West* entering into their subcontract – “a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all

compensation paid to the unlicensed contractor for performance of any act or contract.” *Cal. Bus. & Prof. Code* § 7031(b). Thus, a contractor found to be unlicensed is not merely barred from recovering any outstanding contract balance or damages, but it can be forced to “disgorge” all amounts previously paid.

One must remember that under the reasoning of *Great West*, a California contractor must be licensed at all times, even if the nature of the acts performed while unlicensed may not, in and of themselves, require a license. So long as the contract requires a license, any act under that contract performed while unlicensed may require the contractor to provide reimbursement of all amounts paid -- not just those acts performed while unlicensed.

POTENTIAL PITFALLS

While it may seem simple enough to maintain licensure, contractors must be aware of potential pitfalls that may impact their licensure and render them liable for disgorgement. Here are some potential pitfalls to avoid:

- Contractors changing their business form (e.g., from sole proprietorship to a corporation) must ensure that the person or entity actually entering into the contract and performing the work are the same and licensed at all times.
- Contractors that are business entities (e.g., partnerships or corporations) qualify for a license through a Responsible Managing Employee or Responsible Managing Officer. *Cal. Bus. & Prof. Code* § 7068(b). The “RME” or “RMO” must exercise “direct supervision and control” of the business’ “construction operations.” *Cal Bus. &*

Prof. Code § 7068.1. If not, a court will deem the contractor unlicensed. *Buzgheia v. Leasco*, 60 Cal.App.4th 374 (1997).

- When purchasing a contracting business, the contractor's license is not transferable. *Cal. Bus. & Prof. Code § 7075.1(a)*. Thus, when purchasing a contracting business, the new owners must ensure that the business qualifies for its own license prior to taking over the work of the business purchased.
- A contractor's license will be suspended for failing to satisfy a judgment arising from "construction activities" or posting a bond within 90 days. *Cal. Bus. & Prof. Code § 7071.17(b) and (e)*. Such a suspension also causes the license of other construction companies with the same personnel (e.g., officers, directors, RME, or partner) to be suspended as well. *Cal. Bus. & Prof. Code § 7071.17(j)*.
- A contractor's license will be suspended if the contractor does not have or allows its worker's compensation coverage to lapse. *Cal. Bus. & Prof. Code § 7125.2*. If the contractor underreports payroll to save on worker's compensation premiums and coverage lapses, then the contractor will be deemed unlicensed. *Wright v. Isaac*, 149 Cal.App.4th 116 (2007).

In sum, a contractor should not look at its license as something to obtain and then simply maintain with renewal applications. What many contractors may view as a minor "glitch" resulting in a gap in licensure may not be construed as such by a court. Even a small lapse in licensure can

render a contractor liable for disgorgement for all amounts paid under a contract that may have lasted several years.

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