

California Supreme Court Rules on Contractor Payment Issue

By Aaron P. Silberman, Esq.

The California Supreme Court has held that a contractor is precluded from recovering compensation for work it performed while properly licensed if it was not licensed when it commenced work, in the case of *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, S123238, 05 C.D.O.S. 6163 (7/14/05).

Niederhauser Metal Works Company, Inc. ("Niederhauser") was the metal works subcontractor for general contractor Turner Construction Co. for the construction of Disney's Grand Californian Hotel. Niederhauser entered into two subcontracts with MW Erectors, Inc. – one for structural steel work and the other for ornamental metals work. After Niederhauser terminated MW Erectors, MW Erectors sued Niederhauser and its payment bond sureties for more than \$1.3 million allegedly owing on the two contracts.

The defendants moved for summary judgment on the grounds that MW Erectors did not have the required license when either contract was executed, when work on the first contract commenced (and for the first 18 days of performance), or at any time when work on the second contract was performed (although MW Erectors had a Class C-51 structural steel contractor license when it started work under the second contract, the defendants contended that a Class C-23 ornamental metal contractor license was required). The trial court granted the defendants' motion. MW Erectors appealed, and the Court of Appeal reversed. The Supreme Court reversed in part.

With regard to the first contract, the Court held that MW Erectors' lack of licensure at contracting precluded recovery for all work, including the work it performed after it obtained the required license. The court looked at Business & Professions Code section 7031(a), which generally prohibits a contractor from maintaining an action to recover "compensation for any act or contract where a license is required . . . without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract . . ." The Court found the section's plain language precludes recovery

for all work performed under a contract, even that performed while licensed, if any of the work commenced before the contractor was licensed. The Court of Appeal had interpreted section 7031(a) to allow recovery for "acts" performed while licensed even if the contractor was not properly licensed during all of the contract performance. The Supreme Court rejected this interpretation, holding that the phrase "act or contract" in section 7031(a) should be read as precluding recovery based on not only breach of contract but also any other legal theory (e.g., quantum meruit) for any unlicensed act, with or without a contract. The Court also held that, because MW Erectors was not properly licensed prior to the start of contract performance, section 7031's requirements for substantial compliance were not met.

With regard to the second ornamental contract, the Court rejected the defendants' contention that the contract was illegal and void at inception because MW Erectors was not properly licensed when that contract was executed. It held that section 7031(a) does not preclude recovery where a contractor is unlicensed at contract execution but is licensed at all times during contract performance. The Court affirmed the Court of Appeal's decision that the trial court's grant of summary judgment was improper as there were disputed issues of material fact concerning whether the metal work MW Erectors performed was structural, such that its Class C-51 license was sufficient, or purely ornamental, such that a Class C-23 license was required.

The MW Erectors decision is a mixed bag for general contractors. It will have a positive impact in that it will preclude subcontractors that lacked a proper license for part of their work from recovering compensation from contractors for any of their work. On the other hand, if a general contractor runs into a licensing problem, e.g., a suspension during a portion of its work, then this decision will preclude the general contractor from recovering from the owner for any of its work.

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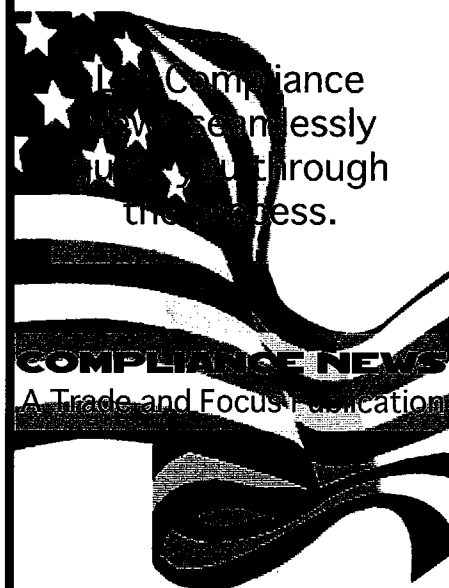
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