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RJO Update: Construction
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Twenty-Nine Palms Ent. Corp. v. Bardos,
No. E051769, 12 C.D.O.S. 12625 [4th App. Dist.]

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If there was ever any doubt, it is now crystal clear that a contractor should only use its license for a single legal entity at any given time. A recent decision from the California Court of Appeal held that a sole-proprietor contractor was not properly licensed, and therefore must disgorge all payments, for work performed under his license when that license was already associated with corporate contractor.

Twenty-Nine Palms Enterprises Corporation, a tribal corporation, hired Paul Bardos, doing business as Cadmus Construction Co., to perform a casino construction project. At that time, neither Bardos nor Cadmus had a contractor's license in their own name. Upon discovering that Cadmus did not hold its own license, Twenty-Nine Palms sued for disgorgement under Business & Professions Code section 7031 ("section 7031") of the entire amount it paid Bardos for the work.

Bardos argued that Cadmus was adequately licensed because it was operating under the contractor's license issued to Bardos Construction, Inc. (BCI). Bardos was the responsible managing officer of BCI. The trial court granted summary judgment in favor of Twenty-Nine Palms, finding that Cadmus did not have a contractor's license at the time it performed the construction work. The trial court awarded Twenty-Nine Palms full disgorgement in the amount of \$751,995. Bardos appealed, and the court of appeal affirmed summary judgment.

As an initial matter, the court of appeal held that Twenty-Nine Palms's status as a tribal entity did not render section 7031 inapplicable. The sovereign immunity defense is only available to the tribe and the tribal entities, and not to parties attempting to avoid liability to tribal entities.

The court also rejected Bardos' argument that the license issued to BCI allowed him to operate as a licensed contractor because he was the officer that held the license to qualify BCI. The problem with this argument, the court explained, was that BCI, as a corporation, was a separate legal entity from its officers and shareholders. Business & Professions Code section 7059.1 prohibits a licensee from conducting business under more than one name for each license. BCI was already using the license at the time Bardos was doing the work for Twenty-Nine Palms. Thus, Bardos's status as BCI's qualifying officer did not entitle either Bardos or Cadmus to operate under the license at that time.

Furthermore, Cadmus did not “substantially comply” with section 7031’s licensing requirement. Bardos knew at the time Cadmus entered into its contract with Palms that neither he nor Cadmus was licensed. He nonetheless made no effort to apply for a license until a few days before the project was completed. This could not be deemed substantial compliance.

This case is a cautionary tale for all contractors to pay close attention to the status of their license, and the name used on their contracts. If your license has ever been associated with a corporate contractor, ensure that this association has ended before using it in your individual capacity. The larger the contract the more pronounced the risk, as the contractor in this case was forced to disgorge a contract amount of nearly \$800,000, even though it appears he fully performed the work.

How We Can Assist

If you have any questions about this subject, please contact the authors of this Case Alert, Alan J. Wilhelmy (awilhelmy@rjo.com) or Tyson Arbuthnot (tarbuthnot@rjo.com). RJO’s Construction Law Practice Group (<http://www.rjo.com/construction.html>) regularly represents and counsels a wide variety of construction industry clients. The Construction Law Practice Group’s articles are available on our web site, at http://www.rjo.com/pub_construction.html. Please visit our web site now and in the future as we continue to track and analyze developments in construction law.

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