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An Issue of Proof: Court of Appeal Decision Holds
That Mere General Denial In Answer to Contractor Fee Complaint
Places Proof of Contractor's Licensure in Controversy With
The Burden Falling on the Contractor

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In an important decision, the California Court of Appeal, Second District, recently held that a defendant's answer containing a general denial of the material allegations of a contractor's fee claim is sufficient to place the issue of the contractor's licensure to be in "controversy" such that the contractor will be required, at trial, to prove its licensure through a verified certificate from the California State Contractors License Board.

This decision was handed down in the matter of Advantec Group, Inc. v. Edwin's Plumbing Co., Inc. (2007) DJDAR 11201 ("Advantec case"). The facts of the Advantec case are common enough. In that case, Advantec Group, Inc. ("Advantec") developed a multi-unit apartment building. It then hired Edwin's Plumbing Co., Inc. ("Edwin's") to furnish plumbing services and related materials. The parties' contract was dated December 29, 2003 and Edwin's performed its work from February 2004 through November 2004 when Advantec terminated Edwin's.

Advantec then filed suit against Edwin's for breach of contract in January 2005. A year later, in January 2006, Edwin's filed a cross-complaint for breach of contract against Advantec. As required by California Business and Professions Code section 7031(a), the cross-complaint contained an averment that Edwin's was duly licensed at all times during the performance of the contract work. Advantec filed an answer to the Edwin's cross-complaint which contained a general denial as contemplated under California Code of Civil Procedure section 431.30(b)(1), but did not set forth an affirmative defense challenging the licensure status of Edwin's.

A trial then ensued in March of 2006. Edwin's counsel called the principal of Edwin's to the stand and sought to elicit testimony as to the licensure of Edwin's. Advantec's counsel objected, arguing that Edwin's licensure status must be proven as called for under Business and Professions Code section 7031(d) which provides:

"[i]f licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action".

The trial court then stated that it planned to preclude Edwin's from introducing any evidence of licensure other than as called for in California Business and Professions Code section 7031 (i.e. by way of a verified certificate of licensure). The attorney for Edwin's then requested a continuance of the trial, which the trial court denied (the matter

was tried before a jury and was already near completion). Counsel for Edwin's also argued that the issue of Edwin's licensure should have been raised as an affirmative defense in Advantec's answer and cited California Code of Civil Procedure section 431.30(b)(2) which requires "new" matters to be raised in addition to any general denial. As to that, the trial court ruled that the general denial contained in Advantec's answer to Edwin's cross-complaint was sufficient to trigger the requirements under California Business and Professions Code section 7031(d).

The trial court then granted a motion for nonsuit on Edwin's cross-complaint on the basis that its counsel had failed to produce evidence of Edwin's licensure. The jury later returned a verdict in the amount of \$46,200.00 in favor of Advantec and Edwin's later appealed.

In a published opinion, the Court of Appeal, Second Appellate District (Division Four) affirmed the trial court's rulings involving Edwin's licensure. In that regard, the Court of Appeal acknowledged that the effect of a "general denial" is only to "put in issue the material allegations of the complaint". See, FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367. However, the Court of Appeal noted that California Code of Civil Procedure section 431.10(a) defines "material allegation in a pleading" as one "essential to the claim or defense" and ruled that a general denial was sufficient to place in controversy the contractor's licensure during the time the contract work was performed. In so ruling, the Court of Appeal distinguished case law which provides that a plaintiff's capacity to sue must be raised as a new matter or affirmative defense in the responsive pleading. As to that, the Court of Appeal cited the California Supreme Court's holding in Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal.3d 988 which recognized that some statutes require that a complaint include an allegation of capacity to sue and then distinguished those types of situations from "ordinary" ones where capacity to sue is not alleged in the complaint.

The Court of Appeal also affirmed the trial court's denial of a continuance of the trial in order to permit Edwin's to obtain a certificate of licensure citing case law which provides that such decisions are generally within the discretion of the trial court. Lucas v. George T. R. Murai Farms, Inc. (1993) 15 Cal.App.4th 1578.

Finally, and also importantly, the Court of Appeal held that the trial court did not err in refusing a jury instruction as to an offset for compensatory damages owed to Edwin's. The Court of Appeal acknowledged that Edwin's had pled offset as an affirmative defense in its answer to the Advantec complaint but noted that Edwin's had not presented any evidence of compensatory damages at trial (presumably because Edwin's was precluded from doing so given its failure to introduce evidence of a certificate of licensure).

The Advantec case certainly provides an important marker for contractor fee cases. In short, a contractor must allege licensure in its complaint and have available to it a certificate of licensure demonstrating that it was licensed at all times while the contract work was performed. However, the Advantec case may even have a greater impact in that it may apply to affirmative defenses for offsets based on unpaid contractor work which, of course, may occur in cases where no affirmative fee claim is ever asserted.

Given this, California contractors at this point in time would be well advised to obtain a certificate of licensure dating back to any time period in which any fee claim is pending or is presently contemplated. In addition, a certificate of licensure should be ordered for any future time periods which are covered by a complaint or cross-complaint which is filed at a later time. This will likely result in a significant burden on the Contractors State License Board which may result in even longer delays in obtaining certificates of licensure. The soundness of the reasoning of the Advantec case may also be in question and could, at some later time, spur reform legislation whereby proof of licensure may be made by means other than a certificate of licensure, particularly in cases involving large, established contractors where there is no factual question as to license status.

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