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A Rare Win - Court of Appeal Rules Subcontractor Which Lacked Specialty Contractor's License Required Under Subcontract Agreement For Public Works Project Could Satisfy Its Proof Of Licensure Obligation Based On Its Class "A" General Engineering Contractor's License...

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As many are aware, the California Courts have ruled, in construing the California Contractor's State License Law, Business and Professions Code § 7000, et seq., that a contractor must have a valid license at all times when work is performed under contract. See, Hydrotech Systems, Ltd. v. Oasis Water Park (1991) 52 Cal.3rd 988, MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc. (2005) 36 Cal.4th 412, Advantec Group, Inc. v. Edwin's Plumbing Co., Inc. (2007) 153 Cal.App.4th 621 and Alatriste v. Cesar's Exterior Designs, Inc. (2010) 183 Cal.App.4th 656. Failure to maintain licensure will result in a claim by the property owner for "disgorgement" of all monies paid to the contractor. Business and Professions Code § 7031(e).

A still open question is whether a subcontractor which executes a subcontract agreement requiring a specialty contractor Class "C" license as contemplated by Business and Professions Code § 7058<sup>1</sup> and performs work which would otherwise require a specialty contractor's license can satisfy its licensing obligation solely on the basis of its having a Class "A" general engineering license as contemplated by Business and Professions Code § 7056<sup>2</sup>. In that regard, the California Court of Appeal, Second District, recently provided some guidance with respect to that question in Pacific Caisson & Shoring, Inc. v. Bernards Bros. Inc. (2011) 193 Cal.App.4th 246 ("Pacific Caisson").

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<sup>1</sup> Business and Professions Code § 7058 defines a "specialty contractor" to be "a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts".

<sup>2</sup> Business and Professions Code § 7056 defines a "general engineering contractor" to be a "contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects:...land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works".

The facts of the Pacific Caisson case are straightforward enough. In Pacific Caisson, Pacific Caisson & Shoring, Inc. ("Pacific Caisson") entered into a subcontractor agreement with general contractor Bernards Bros. Inc. ("Bernards Brothers"). The subcontract was entered into in 2002 and called for Pacific Caisson to provide temporary excavation and support work for a medical center for the County of Ventura for a contract price of \$360,000. The prime contract, the terms of which were incorporated into the subcontract, required the subcontractor which provided excavation support to maintain a Class "C-12"<sup>3</sup> specialty earthwork and paving contractor's license.

Pacific Caisson appears to have performed its work between July 2002 and October of 2003. Pacific Caisson did hold a Class "A" general engineering contractor's license during that time period but never obtained a Class "C-12" specialty license. Also, Pacific Caisson's Class "A" general engineering license was suspended for approximately three months between April 2003 and June 2003.

Pacific Caisson later sued Bernards Brothers for \$544,567 owed under its subcontract. Thereafter, Bernards Brothers cross-complained, moved for summary judgment under Business and Professions Code § 7031 and demanded approximately \$206,000 - representing "disgorgement" of money it paid to a Pacific Caisson as an alleged unlicensed contractor. By its Motion for Summary Judgment, Bernards Brothers contended that Pacific Caisson's admitted failure to maintain a Class "C-12" specialty license, as called for under the prime contract with the public entity, required a finding that it was unlicensed. Bernards Brothers also contended that the suspension of Pacific Caisson's Class "A" general engineering license required the same finding.

After a hearing on the Motion for Summary Judgment and a Motion for Reconsideration, the Trial Court ruled in favor of Bernards Brothers finding that Pacific Caisson was not a properly licensed contractor due to the fact that it did not have a Class "C-12" specialty license and awarded disgorgement damages.

Pacific Caisson appealed.

On appeal, the Court of Appeal determined that, by virtue of its Class "A" general engineering license, Pacific Caisson was indeed a "duly licensed contractor" as required by the Contractor's State Licensing Law, and specifically Business and Professions Code § 7031(a). In its ruling, the Court of Appeal noted that the licensing requirements merely "provide minimal assurance that all

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<sup>3</sup> 16 California Code of Regulations § 832.12 defines a Class C-12 earthwork and paving contractor to be "an earthwork and paving contractor which digs, moves and places material from the surface of the earth, other than water, in such a manner that a cut, fill, excavation ... can be executed".

persons offering such services in California have the requisite skill and character [and] understand applicable local laws and codes". The Court of Appeal further noted that because a Class "A" general engineering contractor is a contractor whose principal work is in connection with fixed works requiring specialized engineering knowledge and skill involving a broad scope of types of works, including earthwork, a separate specialty license was unnecessary citing Ron Yates Construction Co. v. Superior Court (1986) 186 Cal.App.3rd 337.

Moreover, the Court of Appeal held that, at least under the facts of Pacific Caisson, a contractual obligation to hold a specialty license would not provide the basis to find a contractor unlicensed. In that regard, the Court of Appeal acknowledged the provisions of Business and Professions Code § 7059 which permit government bodies to specify requirements for bidding, but ruled that the facts of Pacific Caisson were different because that statute deals with agreements between the governmental entity and the contractors it engages and not third parties (for which there is no privity). The Court of Appeal then remanded the matter for a trial as to whether Pacific Caisson could prove substantial compliance with respect to its licensing obligation given its nearly three month suspension of its Class "A" general engineering license.

The ruling in Pacific Caisson does mark a departure from recent case law in defining the obligations of a contractor in proving licensure. The most significant aspect of Pacific Caisson, separate and apart from the holding in favor of the subcontractor, is that a subcontractor may potentially use a Class "A" general engineering license to satisfy a contractual obligation to maintain a specialty license on a public works project (at least where the subcontractor is not in privity with the public entity). It is the author's view that specialty license subcontractors engaged in fixed works projects should consider applying for Class "A" general engineering licenses at least with respect to large public works jobs.

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