

Though Shall Be Licensed At All Times: Court of Appeal Broadly Construes
Contractor Licensure Requirements To Include Pre-Contract Work

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In a decision which follows an onerous trend for California contractors, the California Court of Appeal, Second Appellate District, ruled that a corporate entity subcontractor could not seek compensation for work on a project even though the corporate entity contractor was properly licensed prior to the date the contract was fully executed and before any on-site work took place.

In a stunning further reversal of fortunes for California contractors, the Second District Court of Appeal ruled in Great West Contractors, Inc. v. WSS Industrial Construction, Inc. (2008) DJDAR 6138 (herein, the "Great West Contractors, Inc." case) that a steel subcontractor could not recoup compensation for work performed on a school project even though (i) the contract was not executed by the general contractor until after the subcontractor had obtained a valid license; and (ii) all on-site work took place after licensure had been obtained. This decision follows a trend whereby the courts have severely limited the doctrine of substantial compliance under Business & Professions Code section 7031(e). See also, MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc. (2005) 36 Cal.4th 412; Pacific Custom Pools, Inc. v. Turner Construction Co. (2000) 79 Cal.App.4th 1254; and Construction Financial v. Purlite Plastering Co. (1997) 53 Cal.App.4th 170, 176-177.

The facts of the Great West Contractors, Inc. case are common enough. In that case, plaintiff WSS Industrial Corporation, Inc. ("WSS") a steel subcontractor, sued general contractor and defendant Great West Contractors, Inc. ("Great West") to recover for work WSS performed under a subcontract with Great West for improvements on a public works project at the New Middle School For the Deaf in Riverside, California. On August 28, 2001, WSS submitted a bid proposal to Great West to perform steel construction work on the project for \$440,000.00. At the time WSS submitted its August 28, 2001 bid, it was incorporated in California but had only applied for, and had not yet obtained, a corporate contractor's license. The license was issued by the California State Contractors License Board on December 21, 2001.

On December 1, 2001, WSS executed the subcontract with Great West, which subcontract incorporated its August 28, 2001 bid proposal. WSS inserted its contractor's license number and returned the subcontract to Great West in early January 2002. Great West signed the subcontract on January 2, 2002.

All work performed on-site at the project appears to have taken place after January 2, 2002. However, the August 28, 2001 bid proposal provided that WSS was to obtain "necessary licenses prior to starting work" and WSS provided a notice to the state (the owner of the project) on October 10, 2001 that it intended to begin work on the project within twenty days (the notice was required so the corporation could be paid for its work).

WSS submitted invoices for preparation of shop drawings and specialized anchor bolts on October 29, 2001 and again on December 19, 2001. The President of WSS testified that ordering materials, such as anchor bolts, was included in the WSS subcontract which was later executed by Great West on January 2, 2002. Also, WSS sent a third invoice on December 25, 2001 (albeit after the corporate contractor's license was issued) for materials to be used on the project.

After Great West failed to pay approximately \$91,000.00 under the subcontract and change orders, WSS filed suit against Great West and the surety for Great West. At a jury trial, WSS prevailed and obtained an award of approximately \$220,000.00 in contract damages, statutory penalties and interest. Great West and its surety contested licensure of WSS at trial and filed a motion for nonsuit which was denied after the trial court found that WSS met the requirements for substantial compliance under Business & Professions Code section 7031(e). The trial court also concluded that a valid individual contractor's license had been issued at all times to the President of WSS and, in any event, licensure was not required for tasks the corporation performed prior to obtaining its license on December 21, 2001.

On appeal, Great West asserted that WSS could not segregate "acts" performed in furtherance of the subcontract, that licensure was required to prepare drawings and order materials, and that licensure of the President of WSS was irrelevant. Great West cited recent case law which confirmed a trend of strict compliance with the licensure statute. See, MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc. (2005) 36 Cal.4th 412 and Banis Restaurant Design, Inc. v. Serrano (2005) 134 Cal.App.4th 1035.

In its decision reversing the judgment of the trial court, the Court of Appeal ruled that WSS had indeed performed work before it was licensed and further held licensure was required to prepare drawings and order materials. The Court of Appeal further ruled that WSS could not segregate “acts” performed in furtherance of the subcontract citing Banis Restaurant Design, Inc. v. Serrano, supra.

The Great West Contractors, Inc. case provides a rather chilling reminder to corporate contractors in California that licensure will be required for virtually all aspects of all work on any job, and it does not matter that all physical, on-site traditional construction work occurred following obtaining of licensure. Given the disposition of the California Supreme Court in MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc., supra, it is doubtful that any further attempt of appeal on the part of WSS will bear any fruit. Therefore, it is anticipated that the Great West Contractors, Inc. decision will stand as another hurdle to California contractors in their attempts to recoup monies for services provided by them.

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