

A Compelling Circumstance ... Court of Appeal Rules That Oral Home Remodel Contract Is Enforceable Against Homeowners Where Homeowners Were, In General, Highly Educated And There Would Be Substantial Unjust Enrichment If Contract Was Found Void

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

California's Home Improvement Statute, found in Business and Professions Code §7159, requires that all contracts for home improvement in excess of \$500 must be in writing. The failure by the contractor licensee to comply with this statute shall be cause for discipline. However, a heavily litigated question concerns whether a Home Improvement Contract, while oral, can be enforced where the cost of work exceeds the \$500 threshold.

In Asdourian v. Araj (1985) 38 Cal.3rd 276, the California Supreme Court ruled that, while in general, contracts made in violation of a regulatory statute are void, illegal contracts will be enforced to avoid unjust enrichment to the defendant at the expense of the plaintiff. However, the Asdourian case concerned a real estate developer defendant which was the owner of a grocery chain, who had bought and sold real property for investment purposes, and was a friend of the plaintiff before the disputes between them occurred.

In holding that the oral contracts in the Asdourian case were enforceable, in violation of Business and Professions Code §7159, the California Supreme Court commented, while the "courts will not 'lend their aid to the enforcement of an illegal agreement or one against public policy ... ' ... 'the rule is not an inflexible one to be applied in its fullest rigor under any and all circumstances.'" Asdourian, supra, 38 Cal.3rd at 291. The Supreme Court went on to indicate that illegal contracts will be enforced in order to "avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff." Asdourian, supra, 38 Cal.3rd at 292. The Court went on to find that the Home Improvement Contract statute was to encourage written contracts for home improvements in order to protect unsophisticated consumers, and further ruled that a contract made in violation of Business and Professions Code §7159 does not involve the kind of "illegality" which automatically renders an agreement void under all circumstances.

The Asdourian decision was the subject of vigorous dissent and left open the question as to what class of person was protected by Business and Professions Code §7159.

In regard to that question, the recent California Court of Appeal decision in Hinerfeld-Ward, Inc. v. Lipian (2010) 188 Cal.App.4th 86 appears to shed further light on this issue. In Hinerfeld-Ward, Inc., the defendant homeowners – the Lipians - purchased real property in Los Angeles and undertook a major remodel. The Lipians hired a noted architect, Michael Folonis, to design the project in 2000, and then hired a general contractor, Cameron Aston, as a general contractor. The Lipians had disputes with Aston and Aston left the project. Folonis then recommended Hinerfeld-Ward, Inc., as the new general contractor. Hinerfeld-Ward, Inc. went forward with the project, which took place over two years, without an actual written agreement. Hinerfeld-Ward, Inc. submitted 19 payment applications for work which had been completed, all of which were approved by Folonis and paid for by the Lipians. However, about two years into the job, the Lipians disputed some of the charges in payment application 20, which included project management and supervision charges. The relationship thereafter soured. The Lipians then terminated Hinerfeld-Ward, Inc., which, at the time of termination, was owed approximately \$200,000.00.

Hinerfeld-Ward, Inc. then sued the Lipians for breach of oral contract, quantum meruit, and wrongful withholding of progress payments. The Lipians countersued.

At trial, the Court held that the oral contract was enforceable even though it violated Business and Professions Code §7159. After a jury trial, Hinerfeld-Ward, Inc. was awarded the entire balance that it was owed, with the homeowners being awarded only \$1,000.00. On appeal, the Lipians argued that the failure to produce a written agreement by Hinerfeld-Ward, Inc. warranted a finding that the contract was void and unenforceable as a matter of law.

The Court of Appeal, after carefully examining the Asdourian case, as well as two related cases on the issue, Arya Group, Inc., v. Cher (2000) 77 Cal.App.4th 610 and Calwood Structures, Inc., v. Herskovic (1980) 105 Cal.App.3rd 519, ruled that because the Lipians were highly educated - Dr. Lipian is a psychiatrist with an M.D. and Ph.D. in psychology, and his spouse has a Master's Degree in both education and clinical psychology, they were not in the class which the Legislature intended to protect and the oral contract was not necessarily void. The Court of Appeal acknowledged that the Lipians were not sophisticated in home improvements per se, but noted their education, that they had their own architect and had substantial remodeling experience, at least with respect to the subject job. Also, the Court of Appeal noted that the value of the services rendered by Hinerfeld-Ward, Inc., \$820,000.00, would result in a substantial, unjustified windfall to the property owners. On that basis, the Court found that the Hinerfeld-Ward, Inc. case presented "compelling" facts warranting the enforcement of the oral home improvement contract.

The Hinerfeld-Ward, Inc. decision is an important one. The Court's ruling holds that the owner's education, training and experience, even outside real estate development, can be considered in determining whether an oral contract in violation of Business and Professions Code §7159 of can be enforced. The Court also, just as with the Asdourian Court, examined the value of the construction services at issue, which is also to be considered a factor.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry Schwartz is Of Counsel with The Morrison Law Group, a professional corporation. Their biographies can be viewed at the website www.morrisonlawgroup.com.

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504 or vandusen@morrisonlawgroup.com.

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.