TOP CALIFORNIA CONSTRUCTION CASES 2008

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I. ATTORNEYS' FEES/THIRD PARTY BENEFICIARY.

INTENDED THIRD PARTY BENEFICIARY OF CONTRACT CAN RECOVER ATTORNEYS' FEES.

- *Loduca v. Polyzos* (2007) 153 Cal.App.4th 334.

Plaintiff property owner sued as a third party beneficiary to enforce a construction contract between a subcontractor and the general contractor. The owner paid the subcontractor directly. And the subcontractor in all likelihood understood that the party most likely to sue on the contract was the owner. Furthermore, the text of the contract expressly referred to the owner and stated that the subcontractor's work (cabinetry) was to be built according to plans developed for the owner's residence. The contract contained the following clause: "If a court action is brought, prevailing party to be awarded attorneys fees and collection costs..." The Court of Appeal found that the owner was an intended third party beneficiary of the contract and affirmed a trial court award of attorneys' fees.

II. STATUTE OF LIMITATIONS / THIRD PARTY BENEFICIARY.

SUIT WAS TIMELY BUT WITHOUT MERIT ABSENT EVIDENCE THAT HOA WAS INTENDED THIRD PARTY BENEFICIARY OF BUILDER'S CONTRACT WITH SUBCONTRACTOR.

- *Landale-Cameron Court, Inc. v. Ahonen* (2007) 155 Cal.App.4th 1401.

A homeowners association for eight-unit condominium complex filed suit against the builder-developer for construction defects arising out of water damage resulting from rainfall. Prior to commencement of suit, and pending efforts to resolve and repair the defects, HOA and the builder-developer executed a tolling agreement under Civil Code Section 1375. After suit was filed, all documents pertinent to the dispute, including documentation of the tolling agreement, were lodged in a court-approved depository and, under a case management order, deemed verified and produced in accordance with the Civil Discovery Act.

The trial court granted summary judgment in favor of the builder-developer based on a finding that "documents establishing the tolling agreement were not adequately authenticated." *Id*. at 1409. The Court of Appeal disagreed: "[C]ounsel for the HOA sufficiently authenticated the documents...when he declared [in opposing summary judgment] that they were true and correct copies

of documents sent by and received from prior counsel for the HOA involved in this litigation." *Id*. at 1409. The lawsuit was thus timely filed.

Denial of the time-bar, however, did not save plaintiff from a finding that the lawsuit was still meritless. Plaintiff claimed to be a third party beneficiary of the contract between the builder-developer and the subcontractor. The Court of Appeal disagreed because:

> The HOA was not in existence at the time of the contract;
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> The contract did not mention that it was a condominium complex and did not even give the name of the project;
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> The project was not a common interest development at the time the contract was signed.

III. STATUTE OF LIMITATIONS / NUISANCE / GOOD FAITH DETERMINATIONS – ALLOCATIONS.

SETTLEMENTS BY SUBCONTRACTORS PROPERLY APPORTIONED AND CREDITED TO NONSETTLING SUBCONTRACTORS.

Construction defect action by homeowners' association under SB 800 was timely filed.

- *El Escorial Owners' Assn. V. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337.

Plaintiff was a condominium association of four three-story buildings housing 261 condominiums which were built during a, six-year, four-phase construction project

Plaintiff instituted proceedings under the Calderon Act, *Civil Code* §1375, and demanded that the builder correct numerous construction defects. The parties met over the next two years in an attempt to resolve the dispute. The parties signed an agreement to toll the statute of limitations retroactively two years and prospectively until the end of the negotiations, which were unsuccessful.

Plaintiff filed a construction defect lawsuit. Prior to trial, most of the defendants settled. Plaintiff proceeded to trial against the non-settling subcontractors. The parties agreed to a court trial. The trial court found the non-settling subcontractors liable.

Nuisance.

The court of appeal affirmed the trial court's determination that Escorial could not bring a nuisance cause of action. In a construction defect lawsuit, a claim for toxic mold contamination is due to negligent construction and does not constitute a cause of action for nuisance: "Where negligence and nuisance

causes of action rely on the same facts about lack of due care, the nuisance claim is a negligence claim." *Id.* at 1349.

Reserving 877.6 Settlement Allocation.

Prior to trial, the trial court, which had presided over the settlement proceedings, approved the offsets for the various defect categories. One of the defendants requested that the trial court reserve for all defendants the right to contest the allocations. During trial, the court reallocated the toxic mold allocation. Plaintiff argued on appeal that once the court had approved the allocation, it could not reallocate the toxic mold allocation. The court of appeal disagreed.

The court of appeal stated that in a complex multiparty construction defect cases involving multiple building trades and multiple construction defects and some degree of overlap, a trial court has the right to revisit the allocations. The court stated that a trial court must therefore have the latitude to adjust off-sets in response to evidence adduced in trial. *Id.* at 1351.

Statute of Limitations-Tolling.

The court of appeal interpreted the tolling provisions of former *Civil Code* section I375(b)(3)(A) broadly. The court stated that the broad tolling provisions apply to the builder and "all parties who may he responsible for the damages" whether or not they are named in the notice. The court held that the parties could agree in writing to toll statutes of limitations for a longer period than the 150 day tolling period. *Id.* at 1355.

The court of appeal rejected the argument that the knowledge of the developer should be imputed to Escorial on the ground that under this approach the developers could insulate themselves from liability by controlling the projects until the limitations period expired. *Id*. at 1357.

IV. GOOD FAITH SETTLEMENTS.

GOOD FAITH SETTLEMENT MOTION IMPROPERLY GRANTED WHERE SOLE BASIS WAS LIMITATION OF LIABILITY CLAUSE.

- *Tsi Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159.

The trial court determined that a developer's $50,000 settlement with geotechnical engineer was in good faith, based solely upon limitation of liability cause in the contract. The general contractor and structural engineer opposed the good faith settlement motion and filed a petition for writ of mandate.

The Court of Appeal granted the writ. It held that the failure of the trial court to consider the merits –and the proportionate share of liability – of the developer's claim against the geotechnical engineer was an abuse of discretion. The $50,000 settlement amount was .8 percent of the damages claimed by the developer against the geotechnical engineer, and the amount paid had no

rational relationship to the engineer's proportionate share of liability, and did not reflect any consideration of the settling tortfeasor's culpability vis a vis non-settling parties. This was inequitable because the geotechnical engineer was "allowed to pay a relatively small amount, and at the same time obtain protection from claims for implied indemnity that may total several millions of dollars." *Id.* at 167.

V. INDEMNITY AND RELEASE AGREEMENTS.

TWO-PARTY "INDEMNITY AGREEMENT" UNENFORCEABLE AS EXCULPATORY CLAUSE.

- *Queen Villas Homeowners Assn. v. Tob Property Mgmt.* (2007) 149 Cal.App.4th 1

A property management company and a homeowners' association entered into a contract. The contract contained the following provision: "Association agrees to indemnify, defend and hold [property management company]...harmless against any and all claims, costs, suits, and damages, including attorneys fees arising out of the performance of this agreement or in connection with the management and operation of the Association..." The property management company invoked the indemnity clause to exculpate itself from liability to the association. The trial court granted summary judgment to the property management company.

The Court of Appeal reversed the judgment on the following grounds:

- Indemnification agreements ordinarily relate to third party claims;
- In order to constitute a valid exculpatory agreement, the language of the agreement must be clear, unambiguous and explicit;
- The subject "indemnity" agreement was unenforceable as a two-party release because there was nothing from the commercial reality of the transaction or the benefit of the bargain received by the management company that required an interpretation of the words "indemnity" or "hold harmless" beyond the context of third party indemnification.

VI. ARBITRATION.

ABSENT CLEAR ARBITRATION AGREEMENT, ARBITRATION CANNOT BE COMPELLED.

- *Adajar V. RWR Homes, Inc.* (2008) 160 Cal.App.4th 563.

Homeowners signed applications for new home warranties acknowledging, among other things, that they had read a sample copy of the warranty book and consented to a binding arbitration provision. The builders

moved to compel arbitration, but did not produce a copy of the sample warranty booklet given to homeowners. However, the builders did provide a copy of a subsequently issued warranty booklet not originally given to homeowners.

Both the trial court and reviewing court concluded that the applications signed by the plaintiffs did not incorporate by reference the terms of arbitration clauses included in the subsequently issued warranty booklets. The court was not obliged to infer that the subsequently issued warranty booklets were identical to the warranty booklet included in homeowners' applications. Arbitration could not be compelled under both the Federal Arbitration Act and the California Arbitration Act absent proof of an arbitration agreement. The liberal policy of the courts to encourage arbitration as a cost-effective alternative dispute resolution procedure does not override the requirement that the parties clearly and unequivocally agree to arbitration.

ARBITRATION AGREEMENT NOT CLEARLY INFORMING HOMEOWNERS OF REQUIREMENT TO ARBITRATE DEFECT CLAIMS WITH BUILDER FOUND UNCONSCIONABLE.

- *Baker V. Osborne Development Corporation* (2008) 159 Cal.App.4th 885.

Builder's application for new home warranty program was presented to homeowners at or shortly before close of escrow. The application contained the following arbitration provision: "Any and all claims, disputes and controversies by or between the Homeowner, the Builder...arising from or related to this Warranty, to the subject Home, to any defect in or to the subject Home or the real property on which the subject Home is situated, or the sale of the subject home by the Builder, including without limitation, any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealing, shall be submitted to arbitration..." The homeowners' purchase and sale agreement, however, contained an arbitration clause which was limited to the deposit of funds in escrow.

The homeowner filed a construction defect action against the builder, which then moved to compel arbitration. Both the trial court and reviewing court held that the arbitration agreement was unenforceable because:

- It did not clearly and unmistakably reserve to the arbitrator the issue of enforceability of the arbitration clause;
- It was not provided to the buyers at the time they signed the purchase and sale agreement;
- The terms of the arbitration agreement were not contained in the warranty application,
- It was not provided to the buyers until closing of escrow;
- "A reasonable buyer would believe that the arbitration agreement to which the application referred would govern any

disputes with [the warranty company] regarding the terms of the warranty, not disputes between the builder and the buyer" (*Id*. at 891); and

- It was one-sided, i.e. for the builder's benefit only, since the builder "would have no conceivable reason to institute legal proceedings against a homeowner after escrow closed" (*Id.* at 896).

ARBITRATION PROVISIONS CONTAINED IN A CONTRACT OF ADHESION AND WHICH VIOLATED BUYER'S REASONABLE EXPECTATIONS ARE UNCONSCIONABLE AND UNENFORCEABLE.

- *Bruni v. Didion* (2008) 160 Cal.App.4th 1272.

Plaintiffs – homebuyers – filed suit against the builder for construction defects.

The original purchase and sale agreement did not contain arbitration provisions. Instead, the builder provided homebuyers with an application for an express warranty which did contain an arbitration clause. The builder induced the homebuyers to sign the warranty by telling them it was a bonus and that it gave extra protection.

The warranty contained preprinted, single-spaced, ten point type arbitration provisions without bold letters or capitalization. The warranty did not provide information as to the "scope or effect" of the arbitration provisions (*Id.* at 1293). The warranty in fact required arbitration of disputes which related not only to the warranty, but also the home, the sale of the home and the arbitration provisions themselves. Both the trial court and the Court of Appeal found the arbitration provisions to be unconscionable because (1) the homebuyers claimed they never knowingly agreed to arbitration, (2) the unconscionable arbitration provisions were not severable under the Federal Arbitration Act and could not be separately enforced and (3) the arbitration provisions were contained in a contract of adhesion and violated the reasonable expectations of the homebuyers, and (4) arbitration provisions not contained within a purchase and sale agreement and only contained within a warranty would induce a buyer to reasonably expect that the arbitration provision would only apply to disputes over the warranty.

FEDERAL ARBITRATION ACT PREEMPTS CALIFORNIA LAW WHERE BUILDING MATERIALS WERE MANUFACTURED OR PRODUCED OUTSIDE CALIFORNIA.

- *Shepard v. McKay Enterprises, Inc. (2007) 148 CAL.APP.4TH 1092.*

Plaintiff homebuyer sued a contractor and a developer because a leak from an underground plumbing pipe caused extensive damage to the home and to personal property. Defendants moved to compel arbitration and argued that

the Federal Arbitration Act preempted California law. The trial court denied the motion to compel.

Evidence that building materials (carpet and vinyl flooring, doors and hardware, trusses, windows and kitchen appliances) used to construct the home were manufactured or produced outside California was sufficient to invoke the phrase "involving commerce" and thus allow preemption of federal law, even though the actual construction dispute did not involve these materials. *Id.* at 1101.

FEDERAL ARBITRATION ACT DOES NOT PREEMPT CALIFORNIA LAW WHERE CALIFORNIA LAW GOVERNS THE AGREEMENT TO ARBITRATE

- *Best Interiors, Inc. v. Millie & Severson Inc.* (2008) 161 Cal.App.4th 1320

A subcontractor sued a general contractor, the owner and two building inspectors, alleging that a portion of the contract price remained unpaid and that improper inspections had resulted in increased building costs. The prime contract contained an arbitration clause, which specified that the contract was to be governed by the law of the place where the project was located, i.e. California. The subcontract did not contain a choice-of-law provision.

However, the subcontract stated that any dispute resolution procedure in the prime contract was incorporated in the subcontract and would apply to any disputes arising under the subcontract. Since the parties agreed that California law would apply to any disputes arising under the subcontract, the Federal Arbitration Act did not preempt the application of California arbitration procedure. The Federal Arbitration Act does not prevent the enforcement of agreements to arbitrate under different rules other than those set forth in the Federal Arbitration Act itself. Under California law, however, the arbitration agreement could not be enforced against the building inspectors because they were not a party to the arbitration agreement and separating arbitrable from non-arbitrable claims by litigating in two different forums could lead to inconsistent results. Both the trial court and the appellate court agreed that denial of the general contractor's petition to compel arbitration was proper.

DISCLOSURE OF INFORMATION BY ARBITRATOR WHICH IS NOT REQUIRED BY ARBITRATION STATUTE IS NOT GROUNDS FOR VACATING ARBITRATION AWARD.

- *Luce, Forward, Hamilton & Scripps v.* (2008) 162 Cal.App.4th 720

A law firm sued its clients for breach of contract. The trial court confirmed an arbitration award in favor of the law firm. The appellate court affirmed the judgment.

The arbitrator had served on a board of directors with a witness in the case and had served on a board of directors with one of the attorneys appearing for the law firm. The arbitrator disclosed this information to the parties out of an

abundance of caution, and not because he was required by law to do so. After receiving a timely notice of disqualification, the arbitrator refused to disqualify himself. There was no evidence that the arbitrator had a personal or business relationship or close friendship with either the witness or the attorney.

The mere fact of serving on a corporate board of directors was insufficient to disqualify the arbitrator and the arbitrator had no absolute duty to disqualify himself simply because the law firm served a notice of disqualification. Social acquaintance, even if of long duration, without a substantial business relationship does not create an impression of possible bias on the part of the arbitrator, nor does membership in a professional association. To trigger required disclosure, a business relationship must be substantial and involve financial consideration.l

X. **INSURANCE.**

INSURER MUST SHOW ACTUAL, SUBSTANTIAL PREJUDICE TO DENY COVERAGE AS THE RESULT OF POLICYHOLDER'S BREACH OF NOTICE PROVISION.

- *Belz V. Clarendon America Insurance Company* (2007) 158 Cal.App.4th 615.

A homeowner sued a contractor for construction defects. The contractor did not notify its insurer of the lawsuit. The insurer only learned about the lawsuit after the entry of default and unsuccessfully attempted to set aside the default. The insurance policy contained the following provision: "[The insurer] shall have no liability for any default judgment entered against any insured, nor for any judgment...or determination of liability rendered or entered before notice to the Company giving the Company a reasonable time in which to protect its and its insured's interests..." The critical issue was whether this language was a notice provision, a cooperation clause or a no-voluntary payment provision.

The homeowner then filed suit against the insurer seeking payment of the default judgment. The insurer filed a summary judgment motion, the grounds for which was the failure of the insured contractor to give the insurer timely notice of the underlying lawsuit in accordance with the policy provisions. The insurer contended that a showing of prejudice was not required and, alternatively, that the entry of default had precluded a thorough investigation of the claim and defense of the lawsuit.

The trial court ruled for the insurer and granted summary judgment on the ground that a showing of prejudice was unnecessary. The Court of Appeal reversed and held that where a default judgment results from a lack of notice of suit by the insured, (1) the insurer is nevertheless liable on the judgment unless it suffered actual, substantial prejudice and (2) the mere inability to investigate a claim or present a defense in the underlying suit does not constitute prejudice.

- "'[A]n insurer must show it lost something that would have changed the handling of the underlying claim...To establish actual prejudice, the insurer must show a substantial likelihood that, with timely notice, and notwithstanding [any] denial of coverage or reservation

of rights, it would have settled the claim for less or taken steps that would have reduced or eliminated the insured's liability'" [*Id.* at 632].

- Example of actual prejudice: Insured is allowed to file bad faith suit seven years after earthquake damage where insured withdrew prior earthquake claim one month after earthquake, as the result of which the insurer halted investigation and the insured then repaired damaged areas, which altered evidence in bad faith suit [*Id.* at 632]

UMBRELLA INSURER HAS NO DUTY TO DEFEND INSURED CONTRACTOR A UNTIL CONTRACTOR'S PRIMARY POLICY, INCLUDING SELF-INSURED RETENTION, IS EXHAUSTED.

- *Padilla Construction Co., Inc. v. Transportation Ins. Co.* (2007) 150 Cal.App.4th 984.

A contractor sued its umbrella (excess) insurer and asserted that the insurer had a duty to defend an underlying suit filed in 2002 which alleged continuing damage caused by construction work performed by the insured in 1995, when the umbrella policy was in effect. The trial court and Court of Appeal agreed that the umbrella insurer had no duty to defend because an unexhausted primary policy existed which provided coverage during the period 2001-2003. This sole primary policy contained an obligation to defend even though there was continuous property damage which existed prior to the inception of the policy, i.e. an increment of harm not even potentially covered by the primary policy.

The court also found that the self-insured retention in the primary policy did not constitute a separate policy of insurance and that the self-insured retention was part and parcel of the primary policy. Accordingly, the duty to defend under the umbrella/excess policy would not be triggered unless and until all coverage under the primary policy, including the self-insured retention, was exhausted.

VII. PREMISES LIABILITY.

PROPERTY MANAGEMENT COMPANY AND OWNER ARE LIABLE FOR FAILURE TO INSTALL SECURITY GATES AFTER PRIOR INCIDENTS.

- *Tan v. Arnel Management Company* (2008) 162 Cal.App.4th 621

Plaintiff was shot in an attempted carjacking in the ungated portion of the common area of his apartment complex. Plaintiff's family sued the management company and property owner for failure to take proper steps to secure the premises against foreseeable criminal acts of third parties.

The trial court, after an evidentiary hearing, ruled that three prior violent crimes against others on the common areas were not sufficiently similar incidents to that involving plaintiff to impose a duty on defendants to protect tenants of the

apartment complex. During the hearing, the trial court asked plaintiffs to articulate what additional security measures were required to prevent harm. Plaintiffs requested that defendants install two security gates, the cost of which was approximately $13, 050.00.

The appellate court reversed and held that (1) the test for imposing liability was prior similar incidents, not prior ***identical*** incidents; and plaintiffs had presented substantial evidence similar incidents (sudden attack without warning, late at night) to demonstrate a reasonably foreseeable risk of violent criminal assaults on the property; and (2) the security measures requested by plaintiffs were reasonable and not especially burdensome

LANDLORD LIABLE FOR FAILURE TO REPLACE AND INSTALL GLASS PANE IN FRONT DOOR.

- *Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269

Decedent lived in an apartment building. The front door of decedent's apartment had a diamond-shaped glass pane in the top half. When decedent moved in, the glass pane was missing and a piece of cardboard covered the opening. Decedent's family on several occasions told the landlord that the absence of the glass pane created a security risk and asked the landlord to replace the glass pane, which the landlord did not do. Decedent's family replaced the cardboard with a small piece of plywood.

Decedent's ex-husband obtained entry to her apartment by removing the plywood panel with a "hard knock", confronted decedent and fatally stabbed her. He was later convicted of murder. No one was aware that the ex-husband was potentially violent, but the neighborhood and the apartment building had experienced violent crimes, including a rape.

The appellate court held that the landlord had a duty to make reasonable efforts to replace the missing windowpane and that the burden of doing so would have been minimal: the materials for replacing the missing pane had already been purchase, and the cost of completing the replacement would have been approximately $15.00.

TRIABLE ISSUE OF FACT AS TO WHETHER LANDLORD WAS LIABLE FOR KNOWN DANGEROUS CONDITION ON ADJACENT PROPERTY.

- *Alcaraz v. Vece* (1997) 14 Cal.4th 1149

A tenant was injured when he stepped into an uncovered utility meter box owned and maintained by the city. The tenant sued the owners of the rental property and argued that since they had actual notice that the cover was missing or broken, they owed a duty to warn or protect him from a known hazardous condition on adjacent property they did not own. There was, however, evidence that the property owners maintained the adjacent property and constructed a fence enclosing the adjacent property after the accident, i.e. they treated the

adjacent property as an extension of property they owned. The trial court granted summary judgment in favor of the property owners.

The appellate court reversed and held that (1) the duty to warn of or correct a known dangerous condition is "not invariably placed" solely on the person who holds title; (2) evidence that a person knew of a dangerous condition on property he did not own and exercised possession or control over that adjacent property may be sufficient to impose liability.

VIII. SLAPP STATUTE.

MANUFACTURER'S DEFAMATION ACTION AGAINST LAWYER WHO ADVERTISED THAT USERS OF PRODUCT MAY HAVE LEGAL RIGHTS TO COMPENSATION WAS PROPERLY DISMISSED UNDER ANTI-SLAPP LAW.

- *Simpson Strong-Tie Company, Inc. v. Gore* (2008) 162 Cal.App.4th 737

An attorney published a newspaper advertisement stating that users of certain brand-name galvanized screws "may" have legal rights against the manufacturers. One of the manufacturers sued the attorney for defamation and other relief. The attorney responded with a SLAPP motion. The trial court and appellate court both agreed that the lawsuit should be dismissed.

The lawsuit was subject to a SLAPP motion because the advertisement was not about the goods and services of the attorney or a competitor but rather was about the manufacturer's products. The manufacturer was not the attorney's competitor. Further an advertisement in anticipation of class action litigation was not "services." The manufacturer did not establish a probability of prevailing in its lawsuit and in fact conceded that many of its galvanized screws were unsuitable for exterior pressure-treated wood application. The advertisement did not therefore contain a provably false assertion of fact to establish an actionable claim for defamation.

IX. PRODUCTS LIABILITY – DESIGN DEFECT

SUMMARY ADJUDICATION FOR MANUFACTURER DENIED WHEN MANUFACTURER FAILED TO PROVIDE EVIDENCE NEGATING THEORY THAT AIR BAG WAS DEFECTIVE UNDER RISK-BENEFIT THEORY.

- *Gonzalez v. Autoliv ASP, Inc.* (2007) 154 Cal.App.4th 780

An automobile passenger who injured her right eye as the result of an accident sued an airbag manufacturer for negligent and strict products liability and for breach of warranty. The passenger contended that the airbag system was defectively manufactured and designed because the airbag deployed with excessive and dangerous force. The trial court granted the manufacturer's summary judgment motion.

The appellate court reversed entry of summary judgment as to summary adjudication of the cause of action for strict products liability. In products liability

cases, ***the defense has the burden*** of negating the theory that the airbag it manufactured was defective under the risk-benefit theory of design defect, i.e. the benefits of the design outweighed its inherent risks. The manufacturer failed to meet this burden. The manufacturer could not obtain summary judgment by contending that it was a component manufacturer if the component part itself was defective when it left the manufacturer's factory.

X. LICENSING.

SUBCONTRACTOR WHICH WAS NOT PROPERLY LICENSED AT ALL TIMES DURING PERFORMANCE OF ITS WORK CANNOT RECOVER ANY COMPENSATION UNDER CONSTRUCTION CONTRACT.

- *Great West Contractors, Inc. v. WSS Industrial Construction, Inc.* (2008) 162 Cal.App.4th 581

A corporate steel subcontractor sued a general contractor to recover for work performed under a construction services contract. The subcontractor's president held a valid individual contractor's license at all times. However, the subcontractor did not have a corporate contractor's license when it submitted its bid proposal and performed some preliminary tasks. The subcontractor obtained its corporate license shortly after the subcontract was signed. The subcontractor obtained a jury verdict and the general contractor appealed.

The court of appeal reversed the judgment. The subcontractor was not entitled to recover any compensation for any act or contract for which a license was required if the subcontractor was not properly licensed ***at all times*** during the performance of the work, including the submission of a bid for the project, the preparation of shop drawings, the ordering of materials and the submission of two initial invoices. The licensing requirement applies whether or not a contractor is operating under an executed contract while performing tasks which require licensing. All of these tasks were done in furtherance of the scope of work included in the subcontract and cannot be segregated or severed from the parties' integrated agreement to avoid the statutory bar to recovery. The licensing statute represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, regardless of the equities. The doctrine of substantial compliance is inapplicable where (1) the only valid license in place at all times was an individual license and (2) the corporation was never licensed as a contractor at any time prior to commencement of work under the contract.