

**“Great West Contractors and Bad News for
Unlicensed (sub)Contractors”**

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Cal. Business and Professions Code (“B&P”) § 7031 states that, with one exception:

[N]o person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action... for the collection of compensation for the performance of any act or contract where a license is required by this chapter...

This means that if a person or entity does work requiring a contractor’s license, and is unlicensed at some time during the course of that work, that person/entity cannot sue for recovery of money due for that work. The court will kick out the lawsuit. This applies “regardless of the merits”: even if you have done all the work, and done it perfectly, you are not entitled to your money if you were unlicensed at *any time* during the course of the work.

This law has been around for 50 years. And recent court cases have shown that it is not a paper tiger: California courts will not be lenient to contractors who fail to meet its requirements.

The most recent of those cases is *Great West Contractors, Inc., v. WSS Industrial Construction, Inc.* (April 30, 2008) 2008 DJDAR 6138. In *Great West*, a subcontractor sued the general contractor for unpaid balances due on a construction contract. A jury awarded the sub \$220,000. The appellate court reversed. It ordered a nonsuit against the subcontractor: essentially, it ordered that the subcontractor’s case be

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thrown out without being heard because the subcontractor, WSS, was not licensed at all times during its performance of the subcontract work.

WSS made several arguments against this ruling. None was persuasive to the court.

WSS argued that the contract had not been fully executed before it received its license. The court responded that the execution date did not control. WSS had done work in furtherance of the project before being properly licensed, and it was all work in furtherance of a job that would require a license, and the preparation of drawings themselves required a license, so those jobs could not be segregated out to preserve WSS's right to payment.

WSS next argued that it "substantially complied" with the license requirements because its RMO held licenses of his own and for other entities. Again, the appellate court said this was not enough. It did not question the RMO's expertise or the validity of the licenses he held. Rather, it said that none of those licenses was a license specifically for WSS, the corporation, and so they were irrelevant.

WSS also argued it had "substantially complied" with the law because (among other things) it was licensed only a few days after signing the contract and remained so for the duration of the project. The appellate court flatly stated that the only way for a contractor to claim it has substantially complied with B&P § 7031 is by showing all of the following:

- 1) The person (or business entity) must show it was properly licensed as a California contractor sometime before performance of the contract (or, presumably, any related acts);

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2) the entity must show it “reasonably and in good faith attempted to maintain licensure”; and

3) the entity must show it “did not know or reasonably should not have known it was no longer licensed.”

Then, and only then, will the a contractor be able to show substantial compliance.

WSS did not meet these requirements. Therefore, the appellate court concluded, it was not entitled to the moneys it claimed to be due.

What does this mean for contractors and subcontractors? Several things.

First, it is a continuing reminder that the courts will enforce licensure requirements without mercy. Not only does B&P § 7031 require a contractor to be properly licensed before bringing suit in order to recover outstanding moneys due and owing, but the party paying the (sub)contractor can bring suit and require the contractor to *pay back all money it was paid for its work on that project* (per B&P § 7031(b)).

Second, it is a wake-up call to anyone who thinks that they can run a contracting company using a license that was not issued to that company, but to another company or to an individual associated with that company.

Finally, all this applies regardless of whether the work was done well or not. Perfect performance is no substitute for compliance with the strict rules of the B&P. The license issue is completely separate from performance.

In a world where construction contractors are required to be ever more sophisticated and competent to meet the demands of their clients and the projects they work on, this issue is a basic but critically important one. The smart contractor protects

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its license zealously as a lifeline that will always need to be there, and the smart attorney will need to be aware of this law to counsel contractor clients.

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