

What's in a Name? *Comment on Ball v. Steadfast - BLK*

It has long been accepted that unlicensed contractors are precluded from collecting compensation for contracting work done while unlicensed. What this means for contractors is that if they perform contracting work without a license they risk not being able to collect compensation should the client refuse to pay the agreed-upon amount for the services performed. Codification of this rule is found in California Business and Professions Code, Section 7031 which states:

“...[N]o person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required...without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.”

In the complete absence of negligence, even if the work is performed 100% in compliance with the terms of the contract, if the customer does not pay for the work performed, the unlicensed contractor cannot bring an action to collect compensation. The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. The law is intended to deter unlicensed contractors from offering their services or accepting solicitations of their work. *See Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal. 3d 988, 277 Cal.Rptr. 517, 803 P.2d 370).

A new case, just decided on June 14, 2011 changes the application of this law. In *Ball v. Steadfast - BLK*, the Third District California Appellate Court was presented with the following question:

- Whether a licensed contractor who was licensed by the Contractors State License Board (“CSLB”) as a sole owner doing business under a fictitious name is precluded from pursuing an action to collect compensation for work performed under two contracts entered into under a name that is different from the licensed name and DBA.

The Court concluded that such a licensed contractor *can* collect compensation.

In the *Ball* case, David E. Ball licensed his business with the CSLB as a sole owner doing business as “Clark Heating & Air Conditioning.” Ball entered into two (2) contracts with CRC, Inc. for work at the food court in the Sunrise Mall. The contract was between CRC, Inc. and “Clark Air Conditioning & Heating.” CRC, Inc. did not pay Ball for the work performed. Ball recorded a lien against the CRC property and filed an action to foreclose on the lien. Steadfast was the alleged owner of the property and demurred to the foreclosure cause of action arguing that Ball was precluded from collecting compensation because the entity that contracted to do the work was not licensed.

The Court ruled that, although the name “Clark Heating & Air Conditioning” appears on the license, “Clark Heating & Air Conditioning” is not the licensee. Rather, it is David E. Ball, the individual that is the licensee. Use of a fictitious name does not create a separate legal entity distinct from the person operating the business. *See Pinkerton’s, Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1348. Thus, “Clark Air Conditioning & Heating” is indistinguishable from David E. Ball himself. The Court explained that nothing in section 7031 suggests that a licensed contractor who contracts under a name different from that listed on the license is not “duly licensed” and thus barred from pursuing an action to collect for work performed under the contract.

In this instance, Ball himself was licensed at all times while the work was performed, therefore the court ruled that he is entitled to collect compensation for the work performed.

However, the Court’s ruling in *Ball* should not be construed to mean that contractors may perform work under any name they choose regardless of the name on the license. Section 7083 of the Business and Professions Code provides that “failure to notify the registrar of [change in business name] within 90 days is grounds for disciplinary action.” Accordingly, the Court in *Ball* stated that while David E. Ball is not precluded from collecting compensation, he is however vulnerable to disciplinary action for failure to register the name change.

While this case is favorable to contractors who choose to perform work under various fictitious names, in order to avoid confusion and possible disciplinary action, we caution contractors to contract under the same name that is used in the CSLB license or register any and all DBAs used.

We at Braden, Hinchcliffe & Hawley are committed to helping our contractor clients navigate these issues and assure that they are fairly compensated for all work performed.

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