

PACIFIC CUSTOM POOLS, INC. v. TURNER CONSTRUCTION COMPANY

COURT OF APPEAL, SECOND DISTRICT, DIVISION 4, CALIFORNIA, 2000
79 CAL.APP.4TH 1254, 94 CAL.RPTR.2D 756

<http://caselaw.findlaw.com/data2/CaliforniaStateCases/B122853.doc>

FACTS Universal City Studios, Inc. (Universal) entered into a general contract with Turner Construction Company (Turner) for the construction of the Jurassic Park ride. Turner entered into a subcontract with Pacific Custom Pools, Inc. (PCP), for PCP to furnish and install all water treatment work for the project for the contract price of \$959,131. PCP performed work on the project from April 1995 until June 1996 for which it was paid \$897,719. PCP's contractor's license, however, was under suspension from October 12, 1995, to March 14, 1996. In addition, PCP's license had expired as of January 31, 1996, and it was not renewed until May 5, 1996. PCP brought suit against Universal and Turner, the defendants, for the remainder of the contract price. The trial court granted the defendants' motion for summary judgment on the basis that PCP had not been licensed in California and thus could not bring suit. PCP appealed.

DECISION Summary judgment in favor of defendants affirmed.

OPINION Berle, J. Section 7031, subdivision (a) provides that a contractor may not maintain an action for the recovery of compensation for the performance of work requiring a license unless it was "a duly licensed contractor at all times during the performance of that" work. In [citation], the [California] Supreme Court set forth the social policy underpinning section 7031:

The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citation.] Section 7031 advances this purpose by withholding judicial aid from those who seek compensation for unlicensed contract work. The obvious statutory intent is to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay.

Because of the strength and clarity of this policy, it is well settled that section 7031 applies despite injustice to the

unlicensed contractor. 'Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] ***

Through a series of cases beginning in 1966, the courts attempted to alleviate the severity of the application of section 7031 by allowing recovery to a contractor who has substantially complied with the licensing statutory scheme. [Citations.]

In reaction to this development in the law, the Legislature amended section 7031 in 1989 to add a subsection (d), which provided that the substantial compliance doctrine shall not apply to that statute. [Citations.] In 1991, the Legislature further amended section 7031 to provide an exception to the prohibition of the substantial compliance doctrine where noncompliance with licensure requirements was the result of inadvertent clerical error or other error or delay not caused by the negligence of the licensee. [Citation.] ***

An unlicensed contractor may thus avoid the consequences of the prohibition against the substantial compliance doctrine under section 7031, subd. (d) if the contractor proves that it had been licensed before performing work, acted reasonably in trying to maintain a license, and did not know or reasonably should not have known that it was not licensed. The parties concur that PCP was

licensed before commencing work on the project. However, the parties dispute whether PCP acted reasonably and in good faith to maintain its license, and whether PCP knew or should have reasonably known that it was not licensed.

In *** the case at bar: (a) PCP was aware in November 1995 that its license was suspended for failure to file a judgment bond and that the deadline date for license renewal was January 31, 1996; (b) PCP knew shortly after February 23, 1996 that a renewal application sent in February 1996 was untimely; and (c) that PCP was advised on April 22, 1996 that its license had not been renewed because PCP's filing fee check had been dishonored. These facts do not suggest that PCP acted reasonably or in good faith to maintain licensure or that PCP did not know or reasonably should not have known that it was not duly licensed, to support a claim of substantial compliance within the meaning of section 7031.

INTERPRETATION A regulatory license is a measure to protect the public from unqualified practitioners; the failure to comply with such a regulation prevents the non-complying party from recovering for services rendered.

CRITICAL THINKING QUESTION When should the failure to obtain a license to operate a business prevent the owner or operator from receiving compensation for services?
