



## What Is In A Name? It May Not Matter As Much As You Think If You Are An Individually Licensed Contractor

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The Contractor's State License Law ("CSLL"), found at Business and Professions Code sections 7000 *et seq.*, provides a comprehensive licensing scheme that requires all contractors doing business in California to possess a valid contractor's license unless they meet the very narrow statutory exceptions to the licensing requirements. The purpose of the CSLL is to protect the general public from incompetence and dishonesty by those who provide construction services in this state. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d) The licensing requirements set forth in the CSLL are enforced by the Contractors State License Board ("CSLB") through disciplinary actions, orders of correction, fines, penalties, license suspension or license revocation. (Business and Profession Code §§ 7011.4, 7090, 7095 and 7099.)

One might ask that if the CSLL regulatory system only applies to licensed contractors, what control does the CSLB or the CSLL have over persons or entities offering contracting services in California without a license? That question is answered by Business and Professions Code sections 7028 and 7031(a). Section 7028 makes it a criminal misdemeanor to engage in the business of or act in the capacity of a contractor without having a valid California contractor's license. Section 7031(a) bars any and all legal actions in California by a party seeking compensation for any construction work or services performed by any person or entity acting in the capacity of a contractor for which a contractor's license is required by the CSLL. Section 7026 of the Business and Professions Code provides a very expansive definition of "contractor" and the work or types of services that makes someone a "contractor" required to be licensed. Simply put, if you perform any construction work that requires a contractor's license in California, you cannot maintain a lawsuit seeking to get paid for the construction work or services you have performed or provided. In addition, if a consumer has paid an unlicensed contractor for construction work, the consumer can recover from the unlicensed contractor any and all sums the consumer paid to that unlicensed contractor for the construction work performed. (Business and Professions Code § 7031(b).) Thus, section 7031 is both a "shield" protecting the consumer from litigation by contractors seeking to get paid and a "sword" allowing a consumer to sue to recover compensation paid to an unlicensed contractor. Furthermore, the courts have also held that the unlicensed contractor is not entitled to any offsets of any kind against the sums sought to be returned by the consumer for the value of the work actually performed or for any materials provided to the consumer. (*Alatraste v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656.) The purpose of this statute and its harsh outcome is to discourage persons who have failed to comply with the contractor's licensing requirements from offering or providing their unlicensed construction services in California.

The courts have strictly enforced Business and Professions Code section 7031(a) and ruled against unlicensed contractors who seek to get paid for construction work that they have performed. (*Alatraste v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th [plaintiff/consumer knew the contractor was not licensed and was applying for a contractor's license, but did not receive it before the contract was signed or the work started]; *White v. Cridlebaugh* (2009) 178 Cal.App.4th [responsible managing officer had not been actively involved in the construction company for several years]; *Opp v. St. Paul Fire & Marine Ins.* (2007) 154 Cal.App.4th [construction company organized as a corporation was not "licensed" and could not get paid for construction work when it used the contractor's license number issued by the CSLB to its president in his individual name].) However, some overzealous consumers of contracting services have been attempting to use Business and Professions Code section 7031(a) and the above-cited cases as a way of not paying for contracting services provided by a contractor who does hold a valid contractor's license by contending



that the name under which the contractor does business or the contractor's name on the contract does not exactly match the information on file with the CSLB for the contractor's license number.

In the case of an individually licensed contractor, also known as a “sole owner” contracting business, the name under which the contractor does business may not be so important as long as the contractor possesses a valid contractor's license during the duration of the construction job at issue. In a recent court case, the owner of a commercial property sought to prevent a heating and air conditioning contractor, David E. Ball, dba Clark Heating and Air Conditioning, from enforcing a mechanic's lien it had recorded against the property for unpaid heating and air conditioning work the contractor had actually performed for the owner. The owner of the property contended that the entity named in the heating and air conditioning construction contract, David E. Ball, dba Clark Air Conditioning and Heating, was not a licensed contractor and not entitled to foreclose its mechanic's lien as a means of getting paid as the result of Business and Professions Code section 7031(a) because the name of the contractor on the contract was different than the name on file with the CSLB. The facts as found by the trial court demonstrated that David E. Ball was licensed as a contractor with the CSLB as a “sole owner” doing business as “Clark Heating and Air Conditioning.” The facts also established that the name of the entity listed in the heating and air conditioning contract at issue was slightly different, David E. Ball, dba Clark Air Conditioning and Heating. In finding that Mr. Ball could foreclose his mechanic's lien to get paid for the construction work he performed, despite section 7031, the court discussed the fact that: (1) a sole proprietorship, an individual doing business under another name, does not create a separate legal entity different from the individual behind the business; (2) the CSLB only allows individual owners, partnerships, limited liability companies, and corporations to be licensed as contractors in California (Business and Professions Code § 7065); and (3) no provision of the CSLB automatically suspends the license of a contractor who does business under a different name than the one registered with the CSLB. The court found significant that the CSLB licenses the individual, in that case David Ball, as the licensee and allows the owner of a sole proprietorship to do business under another or different name. (Business and Professions Code § 7117.) If the individual listed on the contractor's license is validly licensed, nothing in the statutory scheme sets forth that the individual is “unlicensed” simply because he or she does business under another or different business name.

The court in *Ball* also focused on the fact that the public is not harmed by this practice of sole proprietors doing business under another name because a consumer checking with the CSLB to see if the owner who signed the construction contract was licensed would find that the owner possessed a valid contractor's license. A contractor who does business under another name which has not been registered with the CSLB certainly could be subject to discipline under Business and Professions Code section 7083 or 7117 for not timely updating their information on file with the CSLB or for acting as a contractor in a name other than as set forth on their license, but the court held that they are not restricted solely by the name discrepancy from getting paid for construction work they actually performed under a valid contractor's license. However, violations of the CSLB that make a contractor subject to discipline by the CSLB do not create substantive rights that consumers can enforce by civil litigation against the contractor. (*Gonzales v. Concord Gardens Mobile Home Park, Ltd.* (1971) 5 Cal.3d 898, 906; *G&P Elec. Co. v. Dumont* (1961) 194 Cal.App.2d; *Hollywood Etc. Co. v. John Baskin, Inc.* (1953) 121 Cal.App.2d.) Using a shortened form (“Handyman Connection”) of the full licensed name of the contractor (“Handyman Connection of Sacramento, Inc.”) on the contract was not doing business in a name other than that listed on the validly issued contractor's license where the contract contained the correct license number and address for the contractor. (*Handyman Connection of Sacramento, Inc. v. Sands* (2004) 123 Cal.App.4th) Again, the public would not be hurt by this practice of using a shortened form of the licensed name because the consumer would still be able to easily verify with the CSLB that the contractor possessed a valid contractor's license.



This new *Ball* case does not answer the question of whether Business and Professions Code section 7031(a) bars a validly licensed sole owner contractor doing business under another name who fails to register that other name with the CSLB from maintaining a lawsuit to get paid for contracting services, because the plaintiff in the *Ball* case did register his license under the sole proprietorship name of "Clark Heating and Air Conditioning." However, given the holdings in the *Ball* and *Handyman Connection* cases, it is very likely that the courts would allow a validly licensed individual contractor who performed construction work under an unregistered sole proprietorship name to maintain a lawsuit seeking to receive payment for the contracting work the licensed contractor performed. It would certainly increase the contractor's chances of recovering compensation on the construction contract if the contract identified somewhere in the contract the name of the individual contractor (as opposed to the different sole proprietorship business name), the correct address and/or the proper contractor's license number for the contractor so that consumers could easily verify with the CSLB the fact the individual contractor possessed a valid contractor's license. It also would certainly be in the individual contractor's best interest under the CSLL statutory scheme to add or change the sole proprietorship business name associated with the individual contractor's license number as soon as possible after starting to do business under a new sole or different proprietorship business name in order to increase the chances of getting paid and reduce the consumer's potential defenses to the contractor's lawsuit seeking payment.