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The Sword, the Shield, the Missionary, and the Unlicensed Contractor; a Pyrrhic Victory for the Homeowner.

A recent California decision pitted homeowners against the contractor who was supposed to build their retirement home. The job didn't get done, and the contractor was in for a big surprise.

The homeowners contracted with the defendant corporation to construct the home for them. California law requires a corporation holding a contractor's license to designate a "responsible managing officer" or "responsible managing employee", either of which must be actively engaged in the work of the corporation. The contractor here was a corporation; the qualifying license holder, Diani, was an absentee owner, on a mission in Peru for three years, and had turned over all operations to Terry (who handled the homeowners' project.). Diani testified that he did not own any stock in the corporation, that he had given it all to Terry. Diani did not receive any compensation or profits from the corporation.

There were numerous disputes between the homeowner and Terry, and work was stopped. Terry recorded a mechanic's lien against the property, and the lawsuit began.

The Court found that the defendant corporation was not properly licensed because Diani was not actively engaged in the business and no replacement was qualified in Diani's place. Therefore, the contractor's license was suspended by operation of law. The contractor in this case was unlicensed.

The contractor's law is intended to, as a matter of public interest, protect people who hire unlicensed contractors. It does this in two ways:

a. It works as a "shield" to protect them from lawsuits for collection by the contractor. The contractor is not allowed to collect payment for unlicensed work.

b. More important in this case, the law works as a "sword" - it allows persons

October 26, 2009

Page 2

who use unlicensed contractors to get back the money they already paid to the contractor. It provides that they may recover “all compensation paid...” (Sec. 7031(b)). Thus, an unlicensed contractor cannot escape the “shield” result by requiring pre-payment before undertaking the next phase of unlicensed work.

The court found that “all compensation paid...” means the contractor could not reduce the amount to be paid back by offsetting some value for the services provided, wages paid, or for materials paid for. All means all. The unlicensed contractor was ordered to reimburse the homeowners over \$84,000. All the homeowner has to do is try and collect it from the corporation- a dubious proposition. (*White v. Cridlebaugh* F053843)