

## CONSTRUCTION LAW UPDATE: WHAT'S IN A NAME?

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“What’s in a name?” This was the question posed in a recent case decided by the California Court of Appeals involving a contractor doing business under the fictitious business name “Clark Heating and Air Conditioning” but who signed two contracts under the name “Clark Air Conditioning & Heating.” Note the transposed names “Heating” and “Air Conditioning” and the use of the ampersand “&” and the non-ampersand “and.”

In *Ball v. Steadfast-BLK, LLC*, 196 Cal.App.4th 694 (June 14, 2011), David E. Ball, a sole proprietor, held a contractor’s license issued by the California Contractors State License Board (“CSLB”) under the fictitious name “Clark Heating and Air Conditioning.” However, Mr. Ball entered into two contracts under the name “Clark Air Conditioning & Heating.” When Mr. Ball was not paid, he recorded a mechanic’s lien for the work performed and filed a lawsuit to foreclose on the mechanic’s lien. Steadfast-BLK, LLC challenged Mr. Ball’s complaint on the ground that Mr. Ball was never licensed to do business in the name of “Clark Air Conditioning & Heating,” and that his complaint was therefore precluded as a matter of law under Business and Professions Code section 7031, which bars all actions that seek compensation for work in which a contractor’s license is required. The trial court agreed and dismissed Mr. Ball’s complaint.

The California Court of Appeals for the Third District, however, disagreed. The Court explained that a “dba” is not a separate legal entity. “[A] [dba] business name is a fiction” explained the Court “and so too is any implication that the [dba] business is a legal entity separate from its owner.” Therefore, the Court held, whether Mr. Ball did business as “Clark Air Conditioning & Heating” or “Clark Heating and Air Conditioning” was irrelevant, because Mr. Ball’s contractors license was held in his individual name as a sole proprietor and, irrespective of what fictitious business name he did business under, Mr. Ball was himself a licensed contractor and was not precluded by Business and Professions Code section 7031 from seeking recovery for the work he performed.

The Court did not let Mr. Ball completely off the hook however. Business and Professions Code section 7083 provides that a licensee’s failure to “notify the [CSLB] registrar . . . within 90 days of any . . . changes in business address, personnel, business name, qualifying individual bond exemption . . . or exemption to qualify multiple licenses . . . constitute cause for disciplinary action.” Similarly, Business and Professions Code section 7117 provides that “[a]cting in the capacity of a contractor under any license issued hereunder except . . . in the name of the licensee as set forth upon the license . . . constitutes a cause for disciplinary action.” Mr. Ball, therefore, was subject to disciplinary action. For contractors, the case highlights the importance of keeping your CSLB records up to date, and although little thought may be given at the time, to ensure that you submit your bids, enter into your contracts, issue your preliminary 20-day notices, and record your mechanic’s liens under the same name you have registered with the CSLB. Wendel Rosen’s construction team can help you with your CSLB needs.