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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SHAWN REED, Plaintiff and Appellant, v. SUNRUN, INC, Defendant and Respondent.	B276862 (Los Angeles County Super. Ct. No. BC498002)

Appeal from a judgment of the Superior Court of Los Angeles County. John S. Wiley, Jr., Judge. Affirmed.

Hagens Berman Sobol Shapiro, Elaine T. Byszewski, Steve W. Berman and Craig R. Spiegel for Plaintiff and Appellant.

Morrison & Foerster, Miriam A. Vogel, David McDowell and Margaret Mayo for Defendant and Respondent.

* * * * * *

Is a company that sells solar energy to homeowners required to have a contractor's license when it "arranges for" a licensed contractor to install the solar energy system and retains ownership of the system? We conclude the answer is "no." Accordingly, we affirm the trial court's grant of summary judgment to the company in a homeowner's action for a refund of money paid for the system and for damages.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Defendant and respondent SunRun, Inc. (SunRun) sells solar energy to residential homeowners.

Prior to February 2012, SunRun was not a licensed contractor in California. SunRun instead worked with a few dozen independent companies, each of whom was a licensed contractor in California. SunRun and the company it was working with for a particular home would operate in the following manner: (1) the company would visit the home to take measurements and, using that data, would design a custom solar energy system that accounted for available roof space, the optimal direction for maximum sun, the presence of ambient shade, and electrical wiring standards; (2) the company would present the design to the customer for approval; (3) the company would install the solar energy system (consisting of solar panels on either the roof or ground as well as an inverter to connect the panels to the home's electric system and the power grid) following SunRun's "best practices" and using SunRun-approved prefabricated and modular parts; (4) SunRun would retain ownership of the solar energy system and remained responsible for maintaining and insuring the system; (5) the customer would agree to buy solar energy from SunRun for a period of 20 years at

an agreed-upon price, along with the option to buy the solar energy system at various intervals over the 20-year "initial" term; and (6) SunRun would reserve the right to remove the solar energy system, a process that usually took a day, if the customer breached the contract.

In its contract with the customer, SunRun promised to "arrange for the design, permitting, construction, installation and testing of the" solar energy system. However, in SunRun's contracts with the companies, the *companies* "furnish[ed] all installation and construction services" and were to be "solely responsible for all means, methods, techniques, sequences, procedures, and safety and security programs and precautions in connection with the" installation. SunRun could refuse to pay the companies if the installation did not meet SunRun's approval (and could demand changes to the installation as well), but SunRun's approval consisted of checking the actual installation against the initial design (such as verifying that the correct number of solar panels were being installed or that the panels were on the correct side of the roof); this cursory approval process took anywhere from 15 seconds to two minutes. Beyond these approvals, SunRun did not oversee the company's installation work, and no one from SunRun was physically present at the job sites.

In August 2011, plaintiff Shawn Reed (plaintiff) signed a SunRun "Solar Power Service Agreement." Consistent with the procedures set forth above, SunRun arranged for PetersenDean, Inc., a contractor licensed in California, to design and install the solar energy system on plaintiff's roof. Plaintiff knew that he was "buying the energy," not the energy system.

After making just four monthly payments, plaintiff sold his home to a new owner who assumed his agreement with SunRun.

II. Procedural Background

In January 2013, plaintiff sued SunRun.

In the operative first amended complaint, plaintiff sought to certify a class of "[a]ll persons and entities located in the State of California who entered into a solar power contract with SunRun prior to February 2012." As pertinent to this appeal, plaintiff sought to assert two claims on behalf of the class: (1) "SunRun was engaged in the business or acting in the capacity of a contractor" without having a contractor's license, in violation of Business and Professions Code section 7026 et seq.,[1] thereby entitling the class members to a refund of all payments to SunRun; and (2) SunRun engaged in unfair competition, in violation of section 17200, thereby entitling the class members to restitution and injunctive relief, by (a) operating without a contractor's license, (b) misrepresenting the "full cost advantage" of solar power vis-à-vis non-solar power, and (c) engaging in business practices that are "unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers."[2]

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1 All further statutory references are to the Business and Professions Code unless otherwise indicated.

2 In the operative complaint, plaintiff also alleged that (1) the class was entitled to relief under the Consumer Legal Remedies Act (Civ. Code, § 1750 et seq.) and the unfair competition law (§ 17200 et seq.) because SunRun misrepresented the benefits of solar energy in its advertisements, and (2) a subclass consisting of persons who sold their homes

In October 2014, the trial court certified the class.

Plaintiff and SunRun then engaged in two rounds of cross-motions for summary judgment/adjudication.

In July 2015, the trial court ruled on the first round of motions. The court granted SunRun's motion regarding the section 17200 claim after finding no triable issue of material fact as to whether any plaintiff or class member had suffered any injury. However, the court denied SunRun's motion regarding the unlicensed contractor claim because "it's not factually clear at this point whether SunRun at the time needed a [contractor's license] . . . ." The court denied plaintiff's cross-motion for summary adjudication.

In April 2016, and after the parties had conducted further discovery, the trial court ruled on the second round of motions. The court granted SunRun's motion regarding the unlicensed contractor claim on two grounds: (1) SunRun is "not a contractor" within the meaning of section 7026 because it "did not direct or supervise its licensed installers' work at any job site" and because its approval was limited "exclusively to ensur[ing] the local designer and installer's design matched the agreement"; and (2) even if SunRun were a contractor, it was not required to have a license because the prefabricated, modular solar energy systems fell within section 7045's exception to the licensing requirement for "finished products . . . that do not become a fixed

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while subject to a SunRun solar energy contract was entitled to relief under the Consumer Legal Remedies Act and the unfair competition law because SunRun misrepresented how the contract would work if the customer moved. Plaintiff later abandoned the solar energy claims, and never sought to certify the subclass. Plaintiff does not pursue either set of claims in this appeal.

part of [a] structure." The court denied plaintiff's cross-motion for summary judgment.

After the court entered judgment, plaintiff filed this timely appeal.

DISCUSSION

In this appeal, plaintiff argues that the trial court erred in granting summary judgment to SunRun on its unlicensed contractor and section 17200 claims.

"Summary judgment is appropriate when the moving party demonstrates '[it] is entitled to a judgment as a matter of law' (Code Civ. Proc., § 437c, subd. (c)) because, among other things, the nonmoving party (here, plaintiff) cannot establish '[o]ne or more of the elements of [his] cause of action' (Code Civ. Proc., § 437c, subd. (*o*)(1); see *id.*, subd. (p)(2))." (*Tustin Field Gas & Food, Inc. v. Mid-Century Ins. Co.* (2017) 13 Cal.App.5th 220, 226 (*Tustin Field*).) SunRun's status as a contractor that needs to be licensed is an element of both of plaintiff's claims. It is required by section 7031, and it underlies the "unlawful" prong of his section 17200 claim, which is the only viable prong of that claim given that plaintiff abandoned the misrepresentation prong and he never specified how SunRun's conduct was "unfair" aside from its alleged unlawfulness and deceptiveness. (*People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1159-1160 [section 17200 independently prohibits unlawful, deceptive, and unfair conduct].) As a result, the propriety of the trial court's ruling turns in the first instance on the question whether SunRun fits within the definition of a "contractor" under section 7031. This question, like the more general question of whether summary judgment was properly granted, is one we review de novo. (*Tustin Field*, at p. 225; *Vallejo Development Co. v. Beck*

Development Co. (1994) 24 Cal.App.4th 929, 937 (*Vallejo Development*).)

Section 7031 operates as both a shield and a sword: It bars an unlicensed contractor from suing to "collect[] . . . compensation for the performance of any act or contract where a license is required," and also empowers any person who hires an unlicensed contractor to sue to "recover all compensation paid . . . for performance of any act or contract." (§ 7031, subds. (a) & (b); see also *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 521; *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997.) Barring an unlicensed contractor from receiving any compensation for its work, no matter how well that work may have been done, is a "harsh" penalty (*Walker v. Thornsberry* (1979) 97 Cal.App.3d 842, 845), but it serves the "strong public policy" of "'protect[ing] the public from incompetence and dishonesty in those who provide building and construction services'" (*Vallejo Development*, *supra*, 24 Cal.App.4th at p. 938, quoting *Hydrotech Systems, Ltd.*, at p. 995).

Section 7031's penalties apply only to a "person engaged in the business or acting in the capacity of a *contractor*." (§ 7031, subd. (a), italics added.) For these purposes and as pertinent here, a "contractor" is defined as "any person who [(1a)] undertakes to or [(1b)] offers to undertake to, or [(1c)] purports to have the capacity to undertake to, or [(1d)] submits a bid to, or [1(e)] does himself or herself or by or through others [(2)] construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building . . . ." (§ 7026.)

Because, "'[c]ontractor,' for the purposes of [section 7031] is synonymous with 'builder'" (§ 7026), courts have construed the

term "contractor" to apply only to those persons or entities that: (1) actually perform construction services (*Contractors Labor Pool, Inc. v. Westway Contractors, Inc.* (1997) 53 Cal.App.4th 152, 165 (*Westway*); *WSS Industrial Construction, Inc. v. Great West Contractors, Inc.* (2008) 162 Cal.App.4th 581, 587-593 & fn. 6 (*WSS Industrial*)); (2) "supervise the performance of construction services" (*Westway*, at p. 165; *WSS Industrial*, at p. 593 ["overseeing" construction work]); or (3) agree by contract to be "solely responsible" for construction services (*Vallejo Development*, *supra*, 24 Cal.App.4th at pp. 935-936, 939-940). In the last two scenarios, a license is required even if the construction work is actually performed by someone else. (§ 7026 [reaching work "by or through others"]; *Vallejo Development*, at p. 941.) However, a license is not required if a person merely coordinates construction services performed by others (*The Fifth Day, LLC v. Bolotin* (2009) 172 Cal.App.4th 939, 947-950) or supplies labor for those services (*Westway*, at pp. 164-165).

The undisputed facts in this case dictate the finding that SunRun did not act as a "contractor" within the meaning of section 7031. SunRun did not itself actually perform any construction; instead, the independent partner companies did—and each of them was a licensed contractor. SunRun also did not "supervise" or "oversee" the construction services. No SunRun employee was onsite to monitor the installation of the solar energy system, and SunRun's "two minute max" oversight and approval process was geared solely at ensuring that the construction matched the design (rather than ensuring that the construction was done properly). SunRun lastly did not agree by contract to be "solely responsible" for the installation. In the contracts with its customers, SunRun agreed only to "*arrange for*

the design, permitting, construction, installation and testing of the" solar energy system—not to do the construction itself or be solely responsible for that construction. To the contrary, in making its "arrange[ments]" with the independent companies, it was the independent companies—not SunRun—who promised to be "solely responsible for all means, methods, techniques, sequences, procedures, and safety and security programs and precautions in connection with the" installation.

Plaintiff raises two arguments in response.

First, he disputes the analysis set forth above. Specifically, he asserts that SunRun was required to have a license because it (1) "under[took] to . . . improve . . . a[] building" when it signed a contract agreeing to "arrange for the design, permitting, construction, installation and testing" of his solar energy system, and (2) "by or through others . . . construct[ed]" the solar energy system. (§ 7026.) These assertions are without merit for the reasons detailed above—namely, SunRun's promise to "arrange for" the installation of the solar energy system does not qualify as a promise to be "solely responsible" for construction and thus did not require it to have a license (*Vallejo Development*, *supra*, 24 Cal.App.4th at pp. 935-936, 939-940); and SunRun did not sufficiently supervise the construction to be deemed to be engaged in construction "by or through others" (*Westway*, *supra*, 53 Cal.App.4th at pp. 164-165; *WSS Industrial*, *supra*, 162 Cal.App.4th at p. 593).

Second, plaintiff argues that the trial court's grant of SunRun's second motion for summary judgment is inconsistent with its earlier ruling that triable issues of fact precluded granting SunRun's first summary adjudication motion. There is no inconsistency. In the time between the two rulings, the

parties conducted additional discovery and presented new motions based upon a different universe of undisputed facts.

In light of our conclusion that the trial court's grant of summary judgment on plaintiff's unlicensed contractor and section 17200 claims was proper because the law did not require SunRun to have a contractor's license, we have no need to reach any of the alternative grounds for affirmance, such as whether SunRun's solar energy systems constitute "finished products . . . that do not become a fixed part of [a] structure" within the meaning of section 7045, whether plaintiff had suffered sufficient injury to bring a section 17200 claim, and whether the damages available for the section 17200 claim were improperly limited to one year prior to the filing of plaintiff's initial complaint.

DISPOSITION

The judgment is affirmed. SunRun is entitled to its costs.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.