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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

HIGHLAND CONSTRUCTION, INC.,

Plaintiff and Respondent,

v.

REGISTRAR OF CONTRACTORS et al.

Defendants and Appellants.

B229212

(Los Angeles County
Super. Ct. No. BS123118)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Robert H. O'Brien, Judge. Affirmed.

Kamala D. Harris, Attorney General, Alfredo Terrazas, Assistant Attorney General, James M. Ledakis and Marichelle S. Tahimic, Deputy Attorneys General, for Defendants and Appellants.

Mahony & Soll, Paul M. Mahoney and Richard A. Soll for Plaintiff and Respondent.

The Registrar of Contractors (Registrar) and the Contractors State License Board (Board) appeal from the decision by the trial court overturning a citation against respondent Highland Construction, Inc. (Highland). The citation was issued because Highland allegedly made a false statement in a postproject report regarding the participation of a disabled veterans business enterprise (DVBE). The issue presented is whether Business and Professions Code section 7161, subdivision (c)¹ broadly penalizes false statements in documents executed incident to a work of improvement, or whether it more narrowly penalizes fraud in the execution of those documents or the subsequent alteration of those documents. As did the trial court, we give section 7161, subdivision (c) the narrower reading.

We affirm.

FACTS

Highland was awarded a contract by California Department of Transportation (CalTrans) for \$366,568 to construct five highway turnouts (contract). As a condition, Highland agreed to use a DVBE for work, services or materials valued at 3 percent or more of the contract price. In a “CalTrans Bidder-DVBE Information” form, Highland listed Titan as a DVBE who would “[r]emove [and] [r]eplace [a]sphalt concrete” for \$11,173.50. (Emphasis omitted.)

Titan gave Highland a quote to provide 90 tons of asphalt at 4 percent over cost. It planned to purchase the asphalt from a company named Vulcan and charge Highland \$11,173.50. But Titan did not open an account with Vulcan and therefore did not order the asphalt. Highland ordered the asphalt from Vulcan for \$10,756.80, paid Titan \$448.20 to cover its 4 percent markup, and completed the project.

On September 27, 2006, Krista Stelle (Stelle), Highland’s operations manager, signed a document titled “Final Report – Utilization of Disadvantaged, Minority, Women-Owned and Disabled Veteran Business Enterprises” (DVBE Report). (Emphasis omitted.) The document stated that “Titan DVBE” was paid \$11,173.50 to “[r]emove

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

[and] [r]eplace [a]sphalt concrete.” The form for the DVBE Report requested an explanation if “actual . . . DVBE utilization . . . was different than that approved at time of award.” Stelle did not explain that Highland had ordered the asphalt directly and then paid Titan its markup.

A CalTrans engineer signed the DVBE Report.

The Board issued a citation to Highland pursuant to section 7161, subdivision (c) and assessed a civil penalty of \$4,000 on the theory that Highland fraudulently executed a document incident to a work of improvement. Highland appealed. An administrative law judge issued a proposed decision upholding the citation and stated in part that “Titan, the designated DVBE, did not perform any work, but was paid its fair share. [Highland’s] conduct in dealing with a unique situation was reasonable, but [Highland] failed to offer a truthful explanation of events in the [DVBE Report]. As such, the [DVBE Report] contains a fraudulent statement.” The proposed decision was adopted by the Registrar.

Highland filed a petition for writ of mandate to challenge the Registrar’s decision. The trial court granted a peremptory writ and instructed the Registrar to vacate its decision, dismiss the citation and refund the \$4,000 civil penalty paid by Highland within 60 days.

This appeal followed.

DISCUSSION

The Registrar and the Board contend that the superior court improperly interpreted and applied section 7161, subdivision (c). The statute makes it a misdemeanor and cause for discipline if a licensee or applicant commits “[a]ny fraud in the execution of, or in the material alteration of, any contract, trust deed, mortgage, promissory note, or other document incident to a home improvement transaction or other transaction involving a work of improvement.” (§ 7161, subd. (c).) We explain below why the trial court’s order is not subject to attack.

When the statutory language is clear and there is no uncertainty as to what the Legislature intended, we look no further and enforce the statute according to its terms.

(*Phelps v. Stostad* (1997) 16 Cal.4th 23, 32.) We must afford language its usual and ordinary import and, if possible, significance should be given to every word, phrase, sentence and part of an act. Moreover, the language must be construed in light of obvious purpose of the statute in which it appears, and various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory scheme. (*Ibid.*)

Fraud in the execution is a term of art in case law that refers to a situation in which a party is deceived as to the nature of what he or she is signing. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415 (*Rosenthal*).) In our view, that is the usual and ordinary import of the language. Moreover, “the Legislature is presumed to be aware of existing laws and judicial decisions and to have enacted or amended statutes in light of this knowledge, [citation],” (*Nelson v. Pearson Ford Co.* (2010) 186 Cal.App.4th 983, 1008.) Section 7161 was most recently amended in 2006 and the Legislature was presumably aware of the manner in which the courts have interpreted the phrase “fraud in the execution.”

Our interpretation does not mean that contractors can escape discipline for other types of fraud. Section 7116 provides: “The doing of any willful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action.” In addition, discipline can be meted out under section 7161, subdivisions (a) and (b) for using false, misleading or deceptive advertising as an inducement to enter into any contract, and for “[m]aking any substantial misrepresentation in the procurement of a contract for a . . . work of improvement or making any false promise of a character likely to influence, persuade or, induce any person to enter into the contract.”

The obvious purpose of the section 7161, subdivision (c) is to protect the public from sharp practices so that consumers know what they are agreeing to and what they are getting when they sign a contract. It also protects consumers from contractors who try to change the terms of a document after the fact. That purpose is consistent with one of the main purposes of the statutory scheme, which is to ensure that documents provided by

contractors are transparent and reliable. The statute appears in Chapter 9 of the Business and Profession Code entitled “Professions and Vocations Generally.” Division 3 within Chapter 9 is entitled “Contractors.” Article 10 within Division 3 is denominated “Home Improvement Business.” The statutes within Article 10 provide extensive rules regarding the legibility, clarity and content of “home improvement contracts” and “service and repair contracts.” (§§ 7150-7168.)

The Registrar and the Board urge that fraud in the execution means any fraud in executing, carrying out, performing or signing any document, and that fraud in the execution occurs anytime a document contains false information. We cannot concur. The suggested interpretation would rewrite the statute to mean that fraud in the execution includes a misrepresentation of fact. If the Legislature had intended for contractors to be disciplined under section 7161, subdivision (c) for making misrepresentations of fact incident to a transaction involving a work of improvement, it would have used broader language instead of a term of art with specific meaning. And, again, the Legislature is presumed to be aware of existing law. It is noteworthy that other types of fraud have been defined by statute. The fraud statute, Civil Code section 1710, provides that fraudulent deceit is an intentional misrepresentation of fact, a negligent misrepresentation of fact, the suppression of a fact, the assertion of facts that are misleading, or a false promise. The Legislature referred to misrepresentations and false promises in section 7161, subdivision (b) but not subdivision (c). We can conclude that the Legislature’s use of the phrase “fraud in the execution” was purposeful and with the knowledge that it is not the same as a misrepresentation of fact.

According to the Registrar and the Board, our definition is unworkable because the definition of fraud in the execution in *Rosenthal* only applies to contracts and cannot be applied to the “other document[s]” contemplated by section 7161, subdivision (c). We disagree. Fraud in the execution can occur any time a customer is deceived into signing a document incident to a contract such as an invoice, release or anything else a contractor might ask a customer to sign. Moreover, the Registrar and the Board forget that section 7161, subdivision (c) is not limited to fraud in the execution. It also applies to the

alteration of documents. So even if the concept of fraud in the execution only applies to contracts, other documents would still be covered by the statute.

Much is made by the Registrar and the Board of the fact that a CalTrans engineer was deceived into signing the DVBE Report because he believed the misrepresentation that Titan performed work on the project. The problem is that there is no evidence that the engineer believed he was signing something other than the DVBE Report, which means there was no fraud in the execution.

Based on our interpretation of section 7161, subdivision (c), we conclude that the trial court did not err. All other issues raised by the parties are moot.

DISPOSITION

The judgment is affirmed. Highland is entitled to its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD