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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JAMES CIACIUCH et al.,

Plaintiffs and Appellants,

v.

DAVID LEE CHAPMAN,

Defendant and Respondent.

B235238

(Los Angeles County Super. Ct.  
No. PC042373)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

David H. Pierce & Associates, David H. Pierce and Dennis D. Resh for Plaintiffs and Appellants.

Vanderford & Ruiz, Mario M. Menanno, Sean F. Daley and Roger R. Steinbeck for Defendant and Respondent.

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In this construction defects action, plaintiffs and appellants James W. Ciaciuch, and Friendswood Builders, Inc., appeal from a judgment following the granting of a motion for summary judgment in favor of defendant and respondent David Lee Chapman, individually and doing business as Chapman Design and Development (collectively Chapman Design). Appellants contend triable issues of fact exist that preclude the grant of summary judgment. We affirm the judgment.

## **FACTS AND PROCEDURAL BACKGROUND**

### **First Amended Complaint**

Appellants filed a complaint against Chapman Design for breach of contract, negligence, indemnity, declaratory relief, and contribution. The complaint alleged as follows. Ciaciuch owns Friendswood Builders, a Washington corporation. In November 2004 through February 2005, respondent entered into a contract with Friendswood Builders to perform construction services on a residence in Santa Clarita (the project). On January 20, 2006, the homeowners sued appellants and respondent for damages, alleging, inter alia, that the construction work was defective (the homeowners' action). On October 9, 2007, judgment was entered against appellants.

In the first cause of action, appellants alleged respondent breached its contract by failing to complete the job in a workmanlike manner. In the second cause of action, appellants alleged respondent's work on the project was negligent. In the third, fourth, and fifth causes of action for implied contractual, equitable, and total indemnity, appellants alleged the damages in the homeowners' action were caused by acts and omissions of respondent. In the sixth cause of action, appellants requested a determination of the parties' respective rights and obligations. In the seventh cause of action, appellants sought contribution for the judgment in the homeowners' action, which appellants paid, that had been entered against appellants and respondent jointly and severally.

## **Chapman Design's Summary Judgment Motion**

Chapman Design moved for summary judgment on various grounds, including that appellants are barred from recovery on any cause of action because Friendswood Builders was not a licensed contractor in California, as required by Business and Professions Code section 7031, subdivision (a).<sup>1</sup>

Chapman Design entered into a framing subcontract with Friendswood Builders for the project. Friendswood Builders failed to make all payments for Chapman Design's work.

The homeowners' action alleged breach of contract and fraud by appellants. Appellants misrepresented that Friendswood Builders was properly licensed. Friendswood Builders overbilled, performed unnecessary work, and misrepresented what was billed for. There were many deficiencies in the construction, and much of the work needed to be redone. The causes of action alleged against Chapman Design were for negligence and breach of warranty.

When the homeowners filed their lawsuit, Ciaciuch assured the subcontractors that Friendswood Builders would resolve the matter, but appellants failed to defend the action and default judgments were entered. Judgment that was given to the homeowners against appellant, respondent, and others included the cost to remediate and complete. Appellants brought this lawsuit against Chapman Design and other subcontractors to recover for satisfaction of the judgment.

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<sup>1</sup> All references to statutes will be to the Business and Professions Code, unless otherwise stated.

## **Appellants' Opposition to Chapman Design's Summary Judgment Motion**

Appellants contended section 7031 did not bar their causes of action except perhaps for the breach of contract cause of action, because the claims did not seek compensation for unlicensed work. Appellants contended the bar does not extend to their claims for equitable indemnification, contribution, and negligence.

## **Trial Court's Ruling on Chapman Design's Motion for Summary Judgment**

The trial court granted the motion for summary judgment in favor of respondent as to all causes of action. The court found there was no triable issue of material fact and all of the causes of action were barred by section 7031. "The undisputed facts demonstrate that . . . Friendswood Builders[,] the party that contracted with the [homeowners], was never licensed in California. The fact that . . . Ciaciuch was licensed in California is of no moment since he was not the contracting party. . . . [¶] 'Regardless of the equities, section 7031 bars all actions, however they are characterized, which effectively seek compensation for illegal unlicensed contract work. . . . Thus, an unlicensed contractor cannot recover either for the agreed contract price or for the reasonable value of labor and materials. . . .' [Citation.] [¶] Plaintiffs rely on *Ranchwood Communities v. Jim Beat Construction Co.* (1996) 49 Cal.App.4th 1397 [(*Ranchwood*)] to support their claim that an unlicensed contractor may sue and obtain equitable indemnity from negligent subcontractors. *Ranchwood*, however, is distinguishable. There, the contractor was also the developer of the project and thus strictly liable to the homeowners for construction defects. In *Ranchwood*, the allegedly negligent subcontractors had been paid for their work on the project. Here, . . . Friendswood [Builders] was acting solely in the capacity of a general contractor and had no other role. In addition, the undisputed facts demonstrate that defendant[] [was] not paid. Thus, unlike the developer in *Ranchwood*, plaintiffs are not seeking disgorgement of payments by negligent subcontractors for defective work for which plaintiffs were held strictly liable. Rather, plaintiffs here were

found to have committed fraud against the [homeowners] and ordered to pay damages to correct the work negligently performed on the . . . project and to finish the project. Regardless of the label attached to plaintiffs' claims, they are seeking compensation for work done pursuant to an illegal contract which is clearly barred by statute."

In addition, as Friendswood Builders was found to have committed fraud against the homeowners in the homeowners' action, the contribution cause of action cannot succeed based on Code of Civil Procedure, section 875, subdivision (d) ["There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person."].

## **DISCUSSION**

Friendswood Builders contends section 7031 does not deprive it of standing to assert the indemnity, contribution, and negligence causes of action.<sup>2</sup> We conclude the contention has no merit: Friendswood Builders has no standing to sue respondent on any of the causes of action in the first amended complaint.<sup>3</sup>

### **Standard of Review of Orders Granting Summary Judgment**

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision de novo, considering all of the evidence

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<sup>2</sup> Friendswood Builders does not contend the contract cause of action is not barred by section 7031.

<sup>3</sup> To the extent appellants argue that Ciaciuch has standing to sue respondent because, unlike Friendswood Builders, he was a licensed contractor in California, the contention has no merit, because it was Friendswood Builders, not Ciaciuch, that was the general contractor on the project. (*Opp v. St. Paul Fire & Marine Ins. Co.* (2007) 154 Cal.App.4th 71, 75.)

the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports.

[Citation.] In the trial court, once a moving defendant has ‘shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,’ the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff ‘may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .’ [Citations.]” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.) “[W]e “liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.” [Citations.]” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1039.) “There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

## **Section 7031**

Section 7031 provides in pertinent part: “(a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029. [¶] (b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of

competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.”

“To protect the public, the Contractors’ State License Law (CSLL; . . . § 7000 et seq.) imposes strict and harsh penalties for a contractor’s failure to maintain proper licensure. Among other things, the CSLL states a general rule that, regardless of the merits of the claim, a contractor may not maintain any action, legal or equitable, to recover compensation for ‘the performance of any act or contract’ unless he or she was duly licensed . . . .” (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 418, fn. omitted (*MW Erectors*).)

“The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 149-150 [(*Lewis & Queen*)].) The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. . . . [¶] Section 7031 advances this purpose by withholding judicial aid from those who seek compensation for unlicensed contract work. The obvious statutory intent is to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay. [¶] Because of the strength and clarity of this policy, it is well settled that section 7031 applies despite injustice to the unlicensed contractor. ‘Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .’ (*Lewis & Queen, supra*, 48 Cal.2d at p. 151 . . . ; [citations].)” (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 (*Hydrotech*); accord, *MW Erectors, supra*, 36 Cal.4th at p. 423.)

“[S]ection 7031 bars all actions, however they are characterized, which effectively seek ‘compensation’ for illegal unlicensed contract work.” (*Hydrotech, supra*, 52 Cal.3d

at p. 997 [the provisions and purposes of § 7031 cannot be circumvented by characterizing the claim as a tort claim].)

“[C]ourts may not resort to equitable considerations in defiance of section 7031.” (*Lewis & Queen, supra*, 48 Cal.2d at p. 152.) “Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of the state[.]” (*Id.* at p. 151.) The bar of section 7031 applies even where the result would be unjust enrichment. (*MW Erectors, supra*, 36 Cal.4th at p. 423.) “[T]he possibility of the defendant’s unjust enrichment [does] not overcome the absolute prohibition against use of the courts to recover for unlicensed contract work.” (*Id.* at p. 424.)

“The statutory language demonstrates the Legislature’s ‘intent to impose a stiff all-or-nothing penalty for unlicensed work . . . .’ ([*MW Erectors, supra*, 36 Cal.4th,] at p. 426.) The statute’s harsh results are justified by the importance of deterring violations of the licensing requirements. . . .” (*White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 519.)

Subcontractors are in the class protected by the statute when a general contractor is required to have a license. (*Lewis & Queen, supra*, 48 Cal.2d at p. 153.) The CSLL “was enacted for the safety and protection of the public . . . and for the prevention of fraudulent acts by contractors resulting in loss to subcontractors . . . .” (*Fraenkel v. Bank of America* (1953) 40 Cal.2d 845, 848.)

Section 7031 bars a general contractor who is liable to the homeowner for construction defects from suing its subcontractors for indemnification and contribution. (*Ranchwood, supra*, 49 Cal.App.4th at p. 1418.)



## **The Bar of Section 7031 Applies to Friendswood Builders in this Action**

We conclude section 7031 bars Friendswood Builders, an unlicensed contractor, from seeking recovery of the homeowner judgment from respondent, its subcontractor, by asserting claims for indemnity and contribution based on negligence. Friendswood Builders' claims are all founded on its subcontractual relationship with respondent and are based on the construction work it performed in violation of the state's licensing laws. Recovery of some or all of the homeowners' damages award would compensate the unlicensed contractor for performance of its work on the project, a result that is forbidden by section 7031. This result promotes the legislative policy that a "stiff all or nothing penalty" must be imposed for unlicensed work. (See *MW Erectors, supra*, 36 Cal.4th at p. 426.)

*Ranchwood, supra*, does not support appellants' contention that section 7031, subdivision (a) allows an unlicensed general contractor to recover damages from a subcontractor under theories of equitable indemnity and negligence. Each appellant in *Ranchwood* was the developer of a housing development who also acted as his own general contractor on the project. The homeowners who purchased the housing units sued the appellants for damages for construction defects. The appellants cross-complained against subcontractors who had worked on the project for indemnity, contract damages, and contribution, alleging negligence, breach of contract, and breach of warranties. (*Ranchwood, supra*, 49 Cal.App.4th at pp. 1404-1405.) The subcontractors moved for summary judgment on the ground the appellants were not licensed general contractors. (*Id.* at p. 1405.) The court held: (1) suing in their capacity as the developers on the projects to recover damages for which they were potentially strictly liable to the homeowners, the appellants were not barred by section 7031 from seeking indemnification and contribution from the subcontractor; but (2) suing in their capacity as general contractors, section 7031 barred the appellants from recovering damages or seeking indemnification and contribution from the subcontractors for breach of contract and contract-related causes of action. (*Id.* at pp. 1418-1421.) The first holding of

*Ranchwood*, which Friendswood Builders relies on, has no application in this case, because Friendswood Builders was not the developer of the project. As the general contractor on the project, Friendswood Builders was not strictly liable to the homeowners for construction defects, as the appellants in *Ranchwood* were because they were the developers. (See *id.* at p. 1414 [developers may be subject to strict liability].)

As summary judgment was proper on the ground of lack of standing, we need not reach appellants' other contentions challenging the grant of summary judgment.

### **DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to respondent.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.