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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MOOREFIELD CONSTRUCTION, INC.,	G064691
Plaintiff and Respondent,	(Super. Ct. No. 30-2022-01259274)
v.	O P I N I O N
STEVE PANTALEMON,	
Defendant and Appellant.	

Appeal from a judgment of the Superior Court of Orange County, David J. Hesseltine, Judge. Affirmed.

J.M. O'Connor Law Group and Joseph M. O'Connor for Appellant.

Watt, Tieder, Hoffar & Fitzgerald, LLP, Christopher M. Bunge and Thomas M. Padian for Respondent.

Steve Pantalemon appeals from a judgment entered against him for performing unlicensed contractor work and misrepresenting his license status. He contends the trial court erred by finding the work required a contractor's license, that he misrepresented his license status, and that the misrepresentation was relied upon. We see no error and affirm.

FACTS

In January 2022, plaintiff Moorefield Construction, Inc. was working on a restaurant construction project at a hotel casino. Moorefield required a subcontractor to "furnish/install one . . . large and one . . . small wine display," as "climate controlled custom built units" in the restaurant (capitalization omitted), for half of a million dollars. The subcontractor was to act as a "design-build contractor . . . to identify . . . particular materials being used, dimensions, manufacturers, and engineering." The finished displays would include a "refrigeration unit to cool [a] wine cellar" and their installation would require coordination with other subcontractors responsible for "drywall, . . . the ceiling, [and] electrical" work.

Pantalemon's director of operations submitted a proposal for Custom Wine Cellar to do the work. Moorefield then sent a "Letter of Intent" that stated: "By issuance of this 'Letter of Intent' Custom Wine Cellar acknowledges and understands that they are to immediately obtain and submit all insurance certificates required" (capitalization omitted). Pantalemon signed an acknowledgment of the communication as "CEO" of Custom Wine Cellar.

The next day, Pantalemon sent Moorefield two certificates of liability insurance identifying "Wine Cellar Designers Construction, LLC" and "Wine Cellar Designers Group, LLC" as the insureds—neither possessed a contractor's license. An individual named Tassie had been doing business

using the similar name, "Wine Cellar Designers Construction," but as a sole proprietorship—not as a limited liability company. Tassie was licensed but was not involved in any of the parties' dealings.

The record lacks any explanation from Pantalemon to Moorefield why he was using the insurance of the two LLC's. There is no evidence that Pantalemon told Moorefield that Tassie or any "Wine Cellar Designers" entity would perform the work.

The parties subsequently signed a subcontract that included a signature block for "Custom Wine Cellar" and left blanks for Pantalemon to fill in. Pantalemon did not correct the entity name nor did he notify Moorefield the name was incorrect. He typed in he was the CEO of Custom Wine and entered license number 894458:

I have read and fully understand the above agreement and have a copy of same.
I have also read and acknowledged receipt of the attached exhibits.

CUSTOM WINE CELLAR

DocuSigned by:
BY: Steve Pantalemon
D79E1BEEA1AE458...
CEO

TITLE: _____
DATE: 1/20/2022

LICENSE #: 894458 EXP DATE: 04/30/2023

Like the two LLC's in the certificates, neither Pantalemon nor Custom Wine was licensed.[1]

The subcontract provided Custom Wine would "furnish/install wine display per plans, specifications & . . . requirements, climate controlled custom built units with multiple doors, wine racks, glass walls, refrigeration/humidty [sic] units, chef's table cellar & seismic requirement to include engineering & permitted plans for these units including but not limited to all labor, material and equipment to complete." (Capitalization omitted.)

Moorefield countersigned a week later and sent Pantalemon a deposit of $230,400. Three months later, Moorefield terminated the subcontract "for convenience."

When Pantalemon did not return the deposit, Moorefield sued to recover it based on unlicensed contractor work (Bus. & Prof. Code, § 7031, subd. (b))[2] and intentional misrepresentation of his license status.

After a two-day bench trial, the trial court issued an 11-page, single-spaced ruling against Pantalemon on both causes of action. The court found Pantalemon agreed to perform work that required a contractor's

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[1] Four months before the subcontract, the Contractors State License Board fined Pantalemon for performing unlicensed contractor work in an unrelated project. Pantalemon claims that he "explained at [the] trial" of this matter that Tassie "submitted the corrected paperwork to include Mr. Pantelemon and Wine Cellars Designers Construction as an LLC, not as a sole proprietorship in 2021," five months before he was fined. The supporting exhibit does not mention Tassie or Pantalemon. There is no evidence the LLC ever obtained the license.

[2] All further statutory references are to this code.

license; did not have a license and could not rely on Tassie's license; and intentionally misrepresented his license status.

The court found Moorefield was entitled to recover "the full amount of the deposit" and entered a judgment for $230,400. It declined to award punitive damages, finding the evidence of intent to harm was not clear and convincing.

DISCUSSION

I.

SUBSTANTIAL EVIDENCE SHOWS THE WORK REQUIRED A LICENSE

We reject Pantalemon's claim that the work required no license because it was merely the "installation" of a "finished product[]" that did "not become a fixed part of the structure." (§ 7045 [licensing exemption].)

Substantial evidence supports the court's detailed findings regarding the nature of Pantalemon's work. (*McPherson v. EF Intercultural Foundation, Inc.* (2020) 47 Cal.App.5th 243, 257 [standard of review].) The court found "[t]he contract called for [Pantalemon] to install glass walls, doors, climate controls, refrigeration and humidity units, and much more." The court also found "the parties' contract called for the wine coolers, especially the red wine cooler, to become a fixed part of the structure. . . . [T]he contract required [Pantalemon] to specifically design the concept the project architect developed. [Pantalemon] had to do the design and engineering work to come up with functioning coolers."

The undisputed subcontract language supports the court's findings. Custom Wine contracted to "furnish/install . . . custom built units with" "glass walls," "multiple doors," to be "climate controlled," and include "refrigeration/humidty [sic] units." (Capitalization omitted.)

The testimony further supports the findings. Moorefield's vice president testified about "drawings" of the wine coolers that the court found would "become a fixed part of the structure." He testified about the "design-build" character of the work Custom Wine promised: "It's up to the design-build contractor, in this case Custom Wine, to identify all those particular materials being used, dimensions, manufacturers, and engineering." He also testified about the "ducted split system . . . to cool the wine cellar," and the need for Custom Wine to coordinate with other subcontractors responsible for "drywall, . . . the ceiling, [and] electrical" work.

Nothing in Pantalemon's reliance on *Walker v. Thornsberry* (1979) 97 Cal.App.3d 842 (*Walker*) changes our conclusion here. *Walker* involved the "installation" of a "prefabricated restroom[]" onto "a concrete foundation" after it was delivered to the "jobsite" in "prefabricated pieces" and then "assembled . . . and attached . . . to the . . . foundation." (*Id.* at pp. 843–844.)

Here, the court aptly concluded that this case is "much more analogous to *Banis* than *Walker*." *Banis* involved a contract that required the plaintiff "to provide drawings for electrical, plumbing, and ceiling plans. Plaintiff was also to coordinate work with architects as well as structural, mechanical, and electrical engineers." The appellate court concluded a license had been required because the "services involved more than incidental labor." (*Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1046.)

The record amply supports the trial court's reliance on *Banis*. Moorefield testified that Custom Wine was to "identify . . . materials . . . , dimensions, manufacturers, and engineering"; create a functioning refrigeration system; and coordinate with other subcontractors. The court

could reasonably reject Pantalemon's testimony that the product of his work "would be a plug-and-play unit." The court detailed that "the photos of the final product, which Mr. Pantalemon testified used a lot of his work," were "not consistent with a plug-and-play unit that did not become a fixed part of the structure." "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.)

II.

SUBSTANTIAL EVIDENCE SHOWS PANTALEMON HAD NO LICENSE

We reject Pantalemon's claims he really did have a license through "Wine Cellar Designers Construction, LLC" and that Moorefield knew the LLC would do the work.

Undisputed evidence shows the LLC did not have a license. The only licensed individual here was Tassie, who had been doing business using "Wine Cellar Designers Construction" as a sole proprietorship. "[A] sole proprietorship is not a legal entity separate from its individual owner." (*Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694, 701.) Tassie as a sole proprietor was not "Wine Cellar Designers Construction, LLC." (See § 7065, subd. (b)(1); see also § 7059.1, subd. (b) ["[a] licensee shall not conduct business under more than one name . . . ."].) More to the point, Tassie had nothing to do with the project.

Pantalemon's assertion it was Moorefield that drafted the subcontract to designate "Custom Wine Cellar" and not "Wine Cellars Designers Construction, LLC" is of no moment. The identity of who drafted an agreement for work requiring a contractor's license is immaterial. The statute authorizing disgorgement empowers any "person who *utilizes* the services of an unlicensed contractor . . . to recover all compensation." (§ 7031,

subd. (b), italics added.) No contract is even needed. Besides, it was Pantalemon who added the misleading license number and signed the contract as CEO of Custom Wine Cellar.[3]

Given substantial evidence supports the trial court's findings that the work to be performed required a contractor's license and neither Custom Wine nor Pantalemon possessed a license, the court correctly disgorged Moorefield's deposit from Pantalemon. (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896 [""""importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties""""].)[4]

III.

SUBSTANTIAL EVIDENCE SHOWS MOOREFIELD RELIED ON THE MISREPRESENTATION

Pantalemon further contends that Moorefield didn't rely on any misrepresentation because it did not know Custom Wine did not possess "license # 894458" when Moorefield terminated the subcontract "for convenience." Pantalemon contends there was "no actual reliance on any alleged misrepresentation, since licensing concerns played no role in the termination decision." He also contends "[w]hen a party terminates a contract

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[3] The same facts show Pantalemon's misrepresentation was intentional.

[4] We reject Pantalemon's claim for relief from the contractor's license requirement based on the "narrow" statutory ground of substantial compliance. (*Montgomery Sansome LP v. Rezai* (2012) 204 Cal.App.4th 786, 794.) He does not dispute the court's finding that he "individually or doing business as Custom Wine Cellar never ha[d] been licensed." (§ 7031, subd. (e) [relief unavailable to any "person who . . . has never been a duly licensed contractor in this state"].)

for 'convenience' rather than breach, it cannot later claim damages based on the contractor's alleged misrepresentations."

It is not necessary to reach this claim. The $230,000 judgment for "the full amount of the deposit" is supported in its entirety by the cause of action for unlicensed contracting work. The court awarded no additional damages for intentional misrepresentation and declined to impose punitive damages. (Cf. *Stonelight Tile, Inc. v. California Ins. Guarantee Assn.* (2007) 150 Cal.App.4th 19, 39 [""Where several counts or issues are tried, a general verdict will not be disturbed by an appellate court if a single one of such counts or issues is supported by substantial evidence and is unaffected by error""].)

In any event, his contentions miss the mark. Just because Moorefield decided to end its relationship with Pantalemon based on facts independent of misrepresentation does not mean it would have *entered* that relationship regardless. (See *Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1498–1499, 1505–1506 [triable issue on whether misrepresentation induced plaintiffs to enter contract].) The trial court expressly credited the vice president's testimony that Moorefield "would never have signed the contract with [Pantalemon] if [Pantalemon] had not provided a contractor's license number and expiration date showing the contract was current." And Pantalemon's 2021 fine for performing unlicensed contractor work supports a conclusion that Pantalemon knew the importance of being licensed—and of being forthright about his license status.

DISPOSITION

The judgment is affirmed. Respondent is entitled to its costs in this appeal.

SCOTT, J.

WE CONCUR:

MOTOIKE, ACTING P. J.

GOODING, J.