Judicial Notice Exhibit 16

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Assembly Judiciary Committee AB678, 2001

That the attached transcript of 13 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

FILE COPY

Date of Hearing: April 24, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
AB 678 (Papan) – As Introduced: February 22, 2001

SUBJECT: UNLICENSED CONTRACTORS

KEY ISSUE: SHOULD AN INDIVIDUAL WHO USES THE SERVICES OF AN UNLICENSED CONTRACTOR BE SPECIFICALLY AUTHORIZED TO BRING AN ACTION TO RECOVER FEES ALREADY PAID TO THE UNLICENSED CONTRACTOR EVEN THOUGH THE CONTRACTOR HAS FULLY PERFORMED AND THE INDIVIDUAL MAY KNOW THE CONTRACTOR IS UNLICENSED?

SYNOPSIS

This Measure Allows Individuals Who Use The Services Of An Unlicensed Contractor To Bring An Action To Recover All Compensation Already Paid To The Unlicensed Contractor. According To The Author, The Measure Is Intended To Further Encourage Unlicensed Contractors To Become Licensed, Consistent With Existing Law. However, The Measure Arguably Allows Individuals Who Use Unlicensed Contractors To Be Unjustly Enriched By Permitting Them To Recover Compensation Already Paid Despite The Fact That The Contractor Has Fully Performed And Despite Knowing That The Contractor Is Unlicensed. An Author's Amendment To Address This Concern Is Contained In The Analysis.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: The bill as currently in print is not keyed fiscal.

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for the measure, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified

> contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this measure is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of the bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Unjust Enrichment. According to the author, this bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual

who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed and even if they knew the contractor was unlicensed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid. Furthermore, those who knew that the contractor they were employing was unlicensed arguably have "unclean hands," but under this bill they would still be allowed to recover.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ...'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Author's Amendment. Committee staff discussed with the sponsor whether the bill unfairly results in unjustly enriching an individual who uses an unlicensed contractor knowing that the contractor is unlicensed and then sues to recover compensation paid, despite the full performance of the contractor. The sponsor has agreed the bill should be amended to preclude those individuals who use the services of an unlicensed contractor from being able to recover compensation already paid if they knew that the contractor was unlicensed.

The language of this author's amendment is limited to the individual's actual knowledge of whether or not the contractor is licensed, rather than constructive knowledge of that fact. As a result, the concern may be raised that individuals will purposely remain ignorant as to whether or not a contractor they are employing is licensed. The Committee may therefore wish to discuss with the author and the sponsor whether the bill should be amended to also preclude individuals from being able to recover compensation if they "should have known" that the contractor was unlicensed.

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (sponsor)

Opposition

None on file

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 21, 2001

MAR 28 2001

Members of the Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: Assembly Bill No. 678

Dear Ladies and Gentlemen:

As the sponsor of Assembly Bill No. 678, I thank you for consideration of it.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know from the bill's content, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

Quentin L. Kopp

QUENTIN L. KOPP

QLK:dtm
cc: Honorable Louis J. Papan

To desk 4/30

(2)REPORTS OF STANDING COMMITTEES<c2>

¶(2) Committee on Judiciary

¶ Date of Hearing: April 24, 2001 [_]<r>

¶ Mr. Speaker: Your Committee on Judiciary reports:

¶ Assembly Bill No. 678 (8-0)

(1)With amendments with the recommendation: Amend, do pass, as amended and be re-referred to the Committee on Business and Professions. <l>

_____,Chair ___
STEINBERG

(5)Above bill(s) ordered to second reading.

AMENDMENTS TO ASSEMBLY BILL NO. 678

Amendment 1
On page 2, line 8, after "contract" insert:

, unless the person knew that the contractor was unlicensed prior to the time that any payments were made to the contractor

- 0 -

L73

CONCURRENCE IN SENATE AMENDMENTS
AB 678 (Papan)
As Amended July 3, 2001
Majority vote

ASSEMBLY: 69-2 (May 14, 2001) SENATE: 23-10 (July 20, 2001)

Original Committee Reference: JUD.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

The Senate amendments delete language providing that, in the above situation, a person may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

AS PASSED BY THE ASSEMBLY, this bill provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Amendments taken in the Senate remove language which provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor. The Senate deleted this language in order to more strongly encourage contractors to become licensed.

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0002130

ASSEMBLY THIRD READING
AB 678 (Papan)
As Amended May 1, 2001
Majority vote

JUDICIARY	8 -0	BUSINESS & PROFESSIONS	10-0
Ayes:	Steinberg, Bates, Corbett, Dutra, Harman, Longville, Shelley, Wayne	Ayes:	Correa, Bogh, Cedillo, Chavez, Corbett, Kelley, Leach, Cardoza, Nation, Wesson

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract unless the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract, unless the person knew that the contractor was unlicensed prior to making any payments to the contractor. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation

already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of this bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0000626

Judiciary

FILE COPY

Date of Hearing: 04/24/2001

BILL NO.	AB 543	AB 568	AB 583	AB 678
ACTION VOTED ON	Do pass as amended and re-refer to the Cmte on Appr, Rec. Consent	Do pass as amended and re-refer to the Cmte on Appr, Rec. Consent	Do pass as amended and re-refer to the Cmte on Appr	Do pass as amended and re-refer to the Cmte on B. & P.
	Aye : No	Aye : No	Aye : No	Aye : No
Steinberg (Chair)	X :	X :	X :	X :
Pacheco, Robert (V. Chair)	X :	X :	Not Voting	Not Voting
Bates	X :	X :	X :	X :
Corbett	X :	X :	X :	X :
Dutra	Not Voting	Not Voting	Not Voting	X :
Harman	X :	X :	: X	X :
Jackson	X :	X :	X :	Not Voting
Longville	X :	X :	X :	X :
Shelley	X :	X :	X :	X :
Wayne	X :	X :	X :	X :
	Ayes: 9 Noes: 0	Ayes: 9 Noes: 0	Ayes: 7 Noes: 1	Ayes: 8 Noes: 0

RECEIVED:_____

_____, Chair

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document Is In
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

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SACRAMENTO, CA 95814

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Assembly Republican Caucus AB678, 2001

That the attached transcript of 30 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

AB 678 (PAPAN)
CONTRACTORS

Version: 7/3/01 Last Amended
Vote: Majority
None

Vice-Chair: Robert Pacheco
Tax or Fee Increase: No

Authorizes a person who utilizes an unlicensed contractor to bring an action in court for recovery of all compensation paid to the unlicensed contractor for performance of any act or contract.

The "None" is based on a balance between the effort of this bill to further discourage home improvement contracts with unlicensed contractors and not otherwise provide an unjust enrichment of one who knew or should have known that he or she was dealing with an unlicensed contractor.

Policy Question

Should any person, who may or may not have had actual knowledge at the time of entering an agreement with a contractor that the contractor was not licensed, be authorized to 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?

Summary

1. Authorizes a person who utilizes the services of an unlicensed contractor to 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.
2. **SENATE AMENDMENTS** delete the provision that would otherwise prohibit authorization to bring an action in court where the person knew that the contractor was unlicensed prior to making any payments to the contractor.

Support

Quentin Kopp, Superior Court Judge of San Mateo County (Sponsor); American Fence Contractors Association, California Chapter; California Fence Contractors' Association; California Landscape Contractors Association; Engineering Contractors' Association; and Flasher/Barricade Association.

Opposition

None on file.

Arguments In Support of the Bill

1. The sponsor, Judge Quentin Kopp of San Mateo County Superior Court, contends that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.
2. In response to whether such recovery should be authorized to persons who knowingly entered into such contracts with an unlicensed contractor, the sponsor cites *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997-998 (and other appellate holdings) for upholding the proposition that the law should not recognize a contractual or quasi-contractual right for an unlicensed contractor to bring suit to collect for services performed from one who knew of his or her unlicensed status. The sponsor apparently views the policy against any compensation to an unlicensed contractor under such circumstances as so paramount to accord no balance of consideration to such contractor. To further reinforce his position, short of further statutory clarification of the provision or legislative intent language, the sponsor would apparently have his letter on such point published in the Assembly Journal (which would enable future courts reviewing cases involving purchasers with knowledge of an unlicensed contractor to accept the letter as further clarification of the legislature's intent on such issue).

Arguments In Opposition to the Bill

It could be argued that notwithstanding a strong public policy to deter unlicensed persons from engaging in the contracting business, that a party

Assembly Republican Judiciary Votes (8-0) 4/24/01
Ayes: Bates, Harman
Noes: None
Abs. / NV: Robert Pacheco

Assembly Republican Business and Professions Votes (10-0) 5/8/01
Ayes: Bogh, Kelley, Leach
Noes: None
Abs. / NV: John Campbell

Assembly Republican Floor Votes (69-2) 5/14/01
Ayes: All Republicans, except
Noes: Hollingsworth, Mountjoy
Abs. / NV: Ashburn, La Suer, Robert Pacheco, Rod Pacheco, Wyland, Wyman

Senate Republican Floor--VOTES NOT AVAILABLE Votes (0-0) 7/20/01
Ayes: None
Noes: None
Abs. / NV: None

who knowingly ("with unclean hands" as it is stated in the equity side of the law) enters an agreement with an unlicensed contractor should not necessarily be unjustly enriched to the extent that he or she would be entitled to recover all compensation paid to the unlicensed contractor for labor and services performed and material provided. The author's 5/1/01 amendment addressed this issue to the extent of actual knowledge of a purchaser of such service, but it did not address situations where the purchaser either under a reasonable person and circumstances standard should have known or otherwise deliberately avoids taking action to determine that the contractor possesses a valid license and then brings suit to recover compensation paid. FURTHERMORE, ON 7/3/01 IN THE SENATE, THE AUTHOR HAS REVERSED HIS 5/1/01 AMENDMENT TO ALLOW A PURCHASER WITH ACTUAL KNOWLEDGE TO SUE THE CONTRACTOR.

Fiscal Effect

Unknown.

Comments

1. Existing law provides that except for the judicial doctrine of substantial compliance, 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 performance of any contract for which a license is required under the provisions of this law without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract. The merits of the cause of action brought by the person shall have no effect on such prohibition. Such prohibition shall not apply to contractors who are each individually licensed under the provisions of this law but who fail to comply with other law as specified. (Business & Professions Code Section 7031)
2. **Senate Amendment make this bill more questionable and less equitable in allowing the purchaser of services who has actual knowledge to execute an agreement for construction with an unlicensed contractor and then bring suit against the contractor.**

Policy Consultant: Mark Redmond/ Laura Zuniga 7/20/01
Fiscal Consultant:

CONCURRENCE IN SENATE AMENDMENTS
AB 678 (Papan)
As Amended July 3, 2001
Majority vote

ASSEMBLY: 69-2 (May 14, 2001) SENATE: 23-10 (July 20, 2001)

Original Committee Reference: JUD.

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AS PASSED BY THE ASSEMBLY, this bill provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for this bill, the author states:

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According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Amendments taken in the Senate remove language which provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor. The Senate deleted this language in order to more strongly encourage contractors to become licensed.

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0002130

ASSEMBLY BILL 678
ASSEMBLY MEMBER PAPAN
ASSEMBLY JUDICIARY COMMITTEE
APRIL 24, 2001

BACKGROUND
AB 678 Contractors

Source: Judge Quentin Kopp (650) 363-4817
Staff: Glenda Hubner 319-2019

No known similar bills before either this session or a recent previous session of legislature.

No known interim hearings on the subject matter of the bill.

Witnesses: Judge Quentin Kopp

Explanation of the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolved the problem:
Our state's policy since 1939 reflects in Section 7131 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

Existing law prohibits any unlicensed contractor from bringing or maintaining an action to recover compensation in any court in this state. Currently 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

This bill would clarify that 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.

Permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.

Please see attached letter for further explanation.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 13, 2001

MAR 15 2001

LJP NL GH JM HP
BG MS BY

Honorable Louis J. Papan
Room 3173
State Capitol
Sacramento, 95814

Re: Assembly Bill No. 678

Dear Lou:

Thank you for introducing Assembly Bill No. 678 which expressly authorizes a person receiving services of an unlicensed contractor to sue to recover all compensation paid to the unlicensed contractor. The bill thusly amends Section 7031 of the Business and Professions Code.

Section 7031(a) of that code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233.

Section 7031 of the Business and Professions Code reflects the intent of the Legislature that the public be protected from unqualified contractors. The licensing requirements provide minimal assurance that all persons furnishing building and construction services in California possess the requisite skill and character, understand pertinent local laws and codes, and know the

rudiments of administering a contracting business. The obvious intent of Section 7031 is to discourage persons who have not complied with the licensing requirements from offering or providing their unlicensed services for compensation. Section 7031 controls, despite any perceived injustice to the unlicensed contractor. It represents a legislative finding that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness to an unlicensed party. AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed.

The legislative intent set forth above should be manifested in a committee analysis of the bill, as well as by a published letter to the Assembly Journal of Proceedings.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

MAR 2[illegible] 2001

March 23, 2001

Honorable Louis J. Papan
Assemblyman, Nineteenth District
California Legislature
State Capitol
P.O. Box 94249
Sacramento, CA 94249-0019

LJP | NL GH JM HP
BG MS BY

Re: Assembly Bill No. 678

Dear Lou:

As the sponsor of Assembly Bill No. 678, I thank you for its introduction.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

July 18, 2000

Louis J. Papan, Esq.
660 El Camino Real
Millbrae, California 94030

Dear Lou:

I enclose a copy of the recent California Court of Appeal decision in Cooper v. Westbrook Torrey Hills, LP.

You will note on page 7295 of the enclosure that the court, in an unpublished portion of the opinion, refers to the state law preventing an unlicensed building contractor from recovering fees but not requiring any refund of fees already paid an unlicensed contractor.

I think California law should be amended to require the refund of fees paid an unlicensed contractor. While I've observed a few criminal actions against unlicensed contractors during my 18 months as a superior court judge, I don't believe those cases receive much in the way of intensive attention. Permitting recovery of fees paid an unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement don't seem to do.

Please advise me of a time at which we may confer.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

Enclosure

1 of 1 DOCUMENT

HARRY G. COOPER, Plaintiff and Appellant, v. WESTBROOK TORREY HILLS, LP, Defendant and Respondent.

D033909

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT,

DIVISION ONE

81 Cal. App. 4th 1294; 2000 Cal. App. LEXIS 528; 97 Cal.

Rptr. 2d 742; 2000 Cal. Daily Op. Service 5493; 2000 Daily

Journal DAR 7293

July 6, 2000, Filed

NOTICE:

[**1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. CERTIFIED FOR PARTIAL PUBLICATION - Under California Rules of Court, rule 976(b) and 976.1, the introductory paragraph, Factual and Procedural Background, Discussion I and Conclusion are certified for publication.

PRIOR HISTORY:

APPEAL from an order of the Superior Court of San Diego County. Super. Ct. No. 707261. Vincent DiFiglia, Judge.

DISPOSITION:

Reversed and remanded with directions.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff appealed from an order of the Superior Court of San Diego County, California, which denied his motion to recover from defendant costs plaintiff incurred in making a cash deposit which stayed foreclosure proceedings initiated by defendant.

OVERVIEW: Pursuant to a development agreement, defendant advanced the cost of improvements to plaintiff's property, which plaintiff secured with a deed of trust. When plaintiff learned defendant did not have a contractor's license, plaintiff stopped paying defendant, who in turn recorded a notice of default. Plaintiff filed suit to stay foreclosure. The trial court entered judgment for defendant, concluding a contractor's license was unnecessary. Plaintiff obtained a loan, and deposited $ 2.5 million with the clerk of the court. When the appellate court reversed that decision, plaintiff sought to recover over $ 200,000 in expenses he had incurred in making his deposit, under Cal. R. Ct. 26©. The trial court denied the request. On appeal the court reversed. Under Cal. Civ. Proc. Code @ 995.730, a bond and a deposit in lieu of a bond were to be treated as equivalents; since under Rule 26©(6) the cost of obtaining a bond was recoverable, the cost of making a cash deposit was also recoverable. Therefore, plaintiff was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

OUTCOME: Judgment was reversed and remanded with directions to award plaintiff reasonable and necessary interest expenses. there was no basis in the record

81 Cal. App. 4th 1294, *; 2000 Cal. App. LEXIS 528, **1;

97 Cal. Rptr. 2d 742, ***; 2000 Cal. Daily Op. Service 5493

upon which the trial court could properly deny plaintiff's request for the interest costs he incurred in making the deposit needed, since he was entitled to recover the expenses incurred in making the cash deposit.

CORE CONCEPTS

Civil Procedure : Remedies : Deposit in Court

Civil Procedure : Costs & Attorney Fees : Litigation Costs

Cal R. Ct. 26©(6) requires that reasonable expenses necessary to acquire a bond are to be awarded to the prevailing party.

Civil Procedure : Remedies : Deposit in Court

Civil Procedure : Costs & Attorney Fees : Litigation Costs

Cal. Civ. Proc. Code @ 995.730 explicitly requires that a deposit given in place of a bond must be treated in the same manner as a bond. Thus, the reasonable expense incurred in making a deposit must be awarded a prevailing party.

Civil Procedure : Costs & Attorney Fees : Litigation Costs See Cal R. Ct. 26©.

Civil Procedure : Remedies : Deposit in Court
See Cal. Civ. Proc. Code @ 995.730.

Governments & Legislation : Courts

The Judicial Council is empowered to adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute. Cal. Const., art. VI, @ 6.

Governments & Legislation : Courts

Governments & Legislation : Legislation : Construction & Interpretation It is settled that in order to comply with the constitutional requirement of consistency with statutory law, a rule of court must not conflict with the statutory intent. If a court cannot construe a rule of court to be consistent with a statute, the rule is invalid. The hierarchy is well established: the rules promulgated by the Judicial Council are subordinate to statutes.

Civil Procedure : Remedies : Deposit in Court

Civil Procedure : Costs & Attorney Fees : Litigation Costs In order to read Cal. R. Ct. 26© consistent with Cal. Civ. Proc. Code @ 995.730, the reasonable or necessary costs associated with procuring a deposit in lieu of a bond must be awarded to a prevailing party.

Civil Procedure : Remedies : Deposit in Court

Civil Procedure : Costs & Attorney Fees : Litigation Costs

Under Cal. Civ. Proc. Code @ 995.730, courts are required to treat a bond and a deposit in lieu of a bond as equivalents. Because under Cal. R. Ct. 26©(6) the cost of obtaining a bond is recoverable, the cost of making a cash deposit is also recoverable.

COUNSEL:

Solomon, Ward, Seidenwurm & Smith, Richard E. McCarthy and Daniel E.

Gardenswartz, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Linda D. Fox and Karin Dougan Vogel, for

81 Cal. App. 4th 1294, *; 2000 Cal. App. LEXIS 528, **1;

97 Cal. Rptr. 2d 742, ***; 2000 Cal. Daily Op. Service 5493

Defendant and Respondent.

JUDGES:

BENKE, J. WE CONCUR: WORK, Acting P.J., McINTYRE, J.

OPINIONBY:

BENKE

OPINION:

[*1296] [***742] Plaintiff Harry G. Cooper appeals from an order denying his motion to recover [***743] from defendant Westbrook Torrey Hills, LP, (Westbrook), n1 costs Cooper incurred in making a cash deposit which stayed foreclosure proceedings initiated by Westbrook. Cooper contends the loan costs are recoverable under rule 26©, California Rules of Court. n2 We agree with Cooper and reverse the trial court's order.

n1 Formerly AG Land Associates, LLC, and AGLL Corporation. [**2]

n2 All rule references are to the California Rules of Court unless otherwise stated.

FACTUAL AND PROCEDURAL BACKGROUND

Cooper and Westbrook owned adjacent parcels of land they wished to develop. Toward that end, Cooper, Westbrook and other adjoining landowners entered into a Development Agreement with the City of San Diego (the City) and a separate Agreement Among Developers (AAD) with each other dated June 14, 1989. The agreement with City required Westbrook and Cooper to pay the City the cost of infrastructure improvements that the City would make. n3 In addition, Westbrook, Cooper and other landowners agreed to improve their respective parcels in a number of respects, including for instance altering existing soil levels. The AAD made Westbrook, Cooper and other adjoining landowners financially responsible for the cost of these improvements.

n3 The City agreed to provide a fire station, a highway interchange, a sedimentation basin and complete other projects which benefited each of the landowners.

[**3]

Westbrook supervised and advanced the cost of approximately $ 1.6 million in improvements to Cooper's property. The improvements were required under the Development Agreement and Cooper secured the amounts advanced by Westbrook with a deed of trust on his land.

However, at no relevant time did Westbrook hold a California contractor's license. After learning that Westbrook did not have a contractor's license, [*1297] Cooper stopped making payments to Westbrook. In response to Cooper's failure to pay for improvements it had made, Westbrook recorded a notice of default under the deed of trust.

81 Cal. App. 4th 1294, *1297; 2000 Cal. App. LEXIS 528, **3;

97 Cal. Rptr. 2d 742, ***743; 2000 Cal. Daily Op. Service 5493

In order to prevent the foreclosure proceeding from moving forward, Cooper filed suit against Westbrook on January 17, 1997, seeking declaratory and injunctive relief. Cooper alleged that as an unlicensed contractor, Westbrook could not recover any compensation for the improvements it had made to Cooper's property. (Bus. & Prof. Code, @ 7028, subd. (a).)

On August 21, 1997, the trial court, on stipulated facts, entered judgment for Westbrook and determined that under the circumstances of the case, Westbrook was not required to hold a contractor's license to perform work [**4] on Cooper's land.

Westbrook re-noticed the default and foreclosure sale under the Deed of Trust on September 9, 1997. On September 10, 1997, Cooper filed a notice of appeal.

Because its other attempts to stay foreclosure were unsuccessful, n4 Cooper asked the trial court to set an amount for an undertaking. The trial court set an amount of $ 2.5 million, one and one-half times the amount of the disputed debt.

n4 Cooper requested that Westbrook voluntarily stay its non-judicial foreclosure pending the appeal in a letter dated September 23, 1997. Westbrook rejected this request.

Cooper filed a petition for writ of supersedeas with this court requesting a stay of the foreclosure. The writ was denied. Cooper then offered Westbrook an irrevocable letter of credit for the entire amount claimed, plus interest, in exchange for Westbrook's agreement to forego foreclosure pending appeal. Westbrook rejected Cooper's proposal and continued with the foreclosure proceeding. Cooper went so far as to offer to pay the full amount of the claimed debt pending appeal if Westbrook would agree not to argue that payment would render the appeal moot. Westbrook declined this proposal as well.

[**5]

In order to finance the undertaking, Cooper obtained a $ 3 million loan and deposited $ 2.5 million of the loan proceeds [***744] with the clerk of the court. Cooper used the remaining loan proceeds to pay interest on the loan.

On November 16, 1998, we reversed the trial court's judgment. (D029421.) We found that Westbrook's improvements to Cooper's property were work which required a contractor's license and that accordingly Cooper was not required to pay for the work. (Bus. & Prof. Code, s7028, subd. (a).)

On remand, Cooper filed a memorandum in which he sought to recover over $ 200,000 in expenses he had incurred in making his deposit. The trial [*1298] court determined rule 26© does not permit a party to recover the expenses associated with making a cash deposit in lieu of a surety bond. In the alternative the trial court stated that even if it had discretion to award them to Cooper, "I would not in my discretion award Mr. Cooper the costs."

We reverse the trial court's order.

DISCUSSION

81 Cal. App. 4th 1294, *1298; 2000 Cal. App. LEXIS 528, **5;

97 Cal. Rptr. 2d 742, ***744; 2000 Cal. Daily Op. Service 5493

I

Rule 26©(6) requires that reasonable expenses necessary to acquire a bond are to be awarded to the prevailing party. Code of Civil Procedure n5 section 995.730 explicitly requires that a deposit [**6] given in place of a bond must be treated in the same manner as a bond. Thus, contrary to the trial court's ruling, the reasonable expense incurred in making a deposit must be awarded a prevailing party such as Cooper.

n5 Unless otherwise noted, all statutory references are to the California Code of Civil Procedure.

In pertinent part, rule 26© provides: "The party to whom costs are awarded may recover only the following, when actually incurred: ... (5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary and (6) other expense reasonably necessary to procure the surety bond, such as the expense of acquiring a letter of credit required as collateral for the bond."

In 1982, the Legislature enacted a specific provision governing deposits in lieu of bonds, section 995.730. Section 995.730 provides: "A deposit given instead of a bond has the same force and effect, is treated the same, and is subject [**7] to the same conditions, liability, and statutory provisions, including provisions for increase and decrease of amount, as the bond." (@ 995.730, italics added.)

The Judicial Council is empowered to "adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute." (Cal. Const., art. VI, @ 6, italics added; see also 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, @ 204, pp. 272-273.) "It is settled that in order to comply with the constitutional requirement of consistency with statutory law, a rule of court must not conflict with the statutory intent." (Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc. (1997) 60 Cal. App. 4th 352, 364; see also People v. Hall (1994) 8 Cal. 4th 950, 960-963, 35 [*1299] Cal. Rptr. 2d 432; 883 P.2d 974; California Court Reporters Assn. v. Judicial Council of California (1995) 39 Cal. App. 4th 15, 25-26; cf. Cox v. Superior Court (1993) 19 Cal. App. 4th 1046, 1050-1051 [applying a similar provision of Gov. Code, @ 68070 authorizing courts to make local rules "'not inconsistent with law'"]. [**8]) If a court cannot construe a rule of court to be consistent with a statute, the rule is invalid. (Maldonado v. Superior Court (1984) 162 Cal. App. 3d 1259, 1265, 209 Cal. Rptr. 199.) The hierarchy is well established: "the rules promulgated by the Judicial Council are subordinate to statutes." (Id. at p. 1265.) [***745]

In order to read rule 26© consistent with section 995.730, the reasonable or necessary costs associated with procuring a deposit in lieu of a bond must be awarded to a prevailing party. n6 Nevertheless, Westbrook maintains that rule 26© only permits recovery of the costs specified by the rule. In making this argument, Westbrook relies on three cases which, in light of later statutory and rule changes, are no longer controlling.

n6 Other jurisdictions have considered this issue and have reached similar conclusions. Costs of collateral are recoverable even though the security was not labeled a "bond." In Trans World Airlines, Inc. v. Hughes (2d Cir. 1975) 515 F.2d 173, cert. denied (1976) 424 U.S. 934, 47 L. Ed. 2d 341, 96 S. Ct. 1147, the Second Circuit awarded the prevailing defendant the reasonable costs of a letter of credit, as well as the cost of required quarterly audits of the defendant company's net worth, both of which were provided "in lieu of providing a supersedes bond." (515 F.2d at p. 177.)

[**9]

First, Westbrook relies on Sequoia Vacuum Systems v. Stransky (1964) 229 Cal. App. 2d 281, 40 Cal. Rptr. 203. In Sequoia, the court held rule 26© only allows recovery of a premium on a surety bond and therefore refused to award the expenses associated with a deposit in lieu of a bond because it was not a specifically enumerated cost. (Id. at p. 289.) Westbrook also relies on Golf West of Kentucky, Inc. v. Life Investors, Inc. (1986) 178 Cal. App. 3d 313, 223 Cal. Rptr. 539, in which the court held rule 26© prohibited recovery of costs to collateralize a surety bond because such costs were not specifically enumerated. (Id. at pp. 316-317.)

Finally, Westbrook relies on Geldermann, Inc. v. Bruner (1992) 10 Cal. App. 4th 640, where the court also refused to award costs incurred in the process of securing a letter of credit in order to collateralize a surety bond because this cost was not specifically listed in rule 26©. (Id. at p. 644.) In reaching this conclusion, the Geldermann court put the Legislature on notice that rule 26© led to inequitable results. The [**10] court stated rule 26© "ignores the commercial realities of today which may require an expenditure for a letter of credit to serve as security," and further noted that "fairness in this case would compel [plaintiff] to reimburse [defendant] for the cost of the letter of credit." (10 [*1300] Cal. App. 4th at p. 644.) The court further advised the defendant to make his argument to the Judicial Council, the body charged with amending and adopting California Rules of Court. (Ibid.)

The Judicial Council responded directly to the Geldermann court's concern by adding, as of January 1, 1994, subpart 6 to rule 26© and expressly permitting recovery of any "other expense" needed to obtain a bond, including the cost of obtaining a letter of credit. (Rule 26©(6); see also 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, @ 819, p. 845.)

Westbrook argues that the amendment to the rule is a strict one directed solely at the situations present in Geldermann and Golf West, that is, costs associated with obtaining a surety bond. However, as Cooper points out, under section 995.730 we are required to treat a bond and a deposit in lieu of a bond as equivalents. Because under rule [**11] 26©(6) the cost of obtaining a bond is recoverable, the cost of making a cash deposit is also recoverable. Thus, contrary to the trial court's finding, Cooper was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

II

[NOT CERTIFIED FOR PUBLICATION]

81 Cal. App. 4th 1294, *1300; 2000 Cal. App. LEXIS 528, **11;

97 Cal. Rptr. 2d 742, ***745; 2000 Cal. Daily Op. Service 5493

CONCLUSION

Because there was no basis in the record upon which the trial court could properly deny Cooper's request for the interest costs he incurred in making the deposit needed to stay foreclosure pending his prior appeal, the trial court's order must be [***746] reversed. On remand the trial court is directed to award Cooper such interest expenses as it finds were reasonable and necessary.

Order reversed; Cooper to recover his costs of appeal.

BENKE, J.

WE CONCUR:

WORK, Acting P.J.

McINTYRE, J.

Date of Hearing: April 24, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
AB 678 (Papan) – As Introduced: February 22, 2001

SUBJECT: UNLICENSED CONTRACTORS

KEY ISSUE: SHOULD AN INDIVIDUAL WHO USES THE SERVICES OF AN UNLICENSED CONTRACTOR BE SPECIFICALLY AUTHORIZED TO BRING AN ACTION TO RECOVER FEES ALREADY PAID TO THE UNLICENSED CONTRACTOR EVEN THOUGH THE CONTRACTOR HAS FULLY PERFORMED AND THE INDIVIDUAL MAY KNOW THE CONTRACTOR IS UNLICENSED?

SYNOPSIS

This Measure Allows Individuals Who Use The Services Of An Unlicensed Contractor To Bring An Action To Recover All Compensation Already Paid To The Unlicensed Contractor. According To The Author, The Measure Is Intended To Further Encourage Unlicensed Contractors To Become Licensed, Consistent With Existing Law. However, The Measure Arguably Allows Individuals Who Use Unlicensed Contractors To Be Unjustly Enriched By Permitting Them To Recover Compensation Already Paid Despite The Fact That The Contractor Has Fully Performed And Despite Knowing That The Contractor Is Unlicensed. An Author's Amendment To Address This Concern Is Contained In The Analysis.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: The bill as currently in print is not keyed fiscal.

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for the measure, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified

> contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this measure is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of the bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Unjust Enrichment. According to the author, this bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual

who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed and even if they knew the contractor was unlicensed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid. Furthermore, those who knew that the contractor they were employing was unlicensed arguably have "unclean hands," but under this bill they would still be allowed to recover.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ...'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Author's Amendment. Committee staff discussed with the sponsor whether the bill unfairly results in unjustly enriching an individual who uses an unlicensed contractor knowing that the contractor is unlicensed and then sues to recover compensation paid, despite the full performance of the contractor. The sponsor has agreed the bill should be amended to preclude those individuals who use the services of an unlicensed contractor from being able to recover compensation already paid if they knew that the contractor was unlicensed.

The language of this author's amendment is limited to the individual's actual knowledge of whether or not the contractor is licensed, rather than constructive knowledge of that fact. As a result, the concern may be raised that individuals will purposely remain ignorant as to whether or not a contractor they are employing is licensed. The Committee may therefore wish to discuss with the author and the sponsor whether the bill should be amended to also preclude individuals from being able to recover compensation if they "should have known" that the contractor was unlicensed.

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (sponsor)

Opposition

None on file

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

AB 678

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE : 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 69-2, 5/14/01 - See last page for vote

SUBJECT : Unlicensed contractors

SOURCE : Judge Quentin L. Kopp

DIGEST : This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS : Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

CONTINUED

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Comments

Purpose . According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

Background . In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (7/17/01)

Judge Quentin L. Kopp (source)

□

California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments
American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

ARGUMENTS IN SUPPORT : The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg
NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

□

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

ASSEMBLY THIRD READING
AB 678 (Papan)
As Amended May 1, 2001
Majority vote

JUDICIARY	8 -0	BUSINESS & PROFESSIONS	10-0
Ayes:	Steinberg, Bates, Corbett, Dutra, Harman, Longville, Shelley, Wayne	Ayes:	Correa, Bogh, Cedillo, Chavez, Corbett, Kelley, Leach, Cardoza, Nation, Wesson

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract unless the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract, unless the person knew that the contractor was unlicensed prior to making any payments to the contractor. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation

already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of this bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0000626

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

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The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Senate Republican Caucus AB678, 2001

That the attached transcript of 21 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

AB 678

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE: 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 69-2, 5/14/01 - See last page for vote

SUBJECT: Unlicensed contractors

SOURCE: Judge Quentin L. Kopp

DIGEST: This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS: Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

CONTINUED

This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Comments

Purpose. According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

Background. In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (7/17/01)

Judge Quentin L. Kopp (source)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments
American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

CONTINUED

ARGUMENTS IN SUPPORT: The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg

NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

1020 N St., #254

LIVINGSTON & MATTESICH

PARKE D. TERRY
LEGISLATIVE ADVOCATE

June 20, 2001

Honorable Liz Figueroa, Chair
Senate Business & Professions Committee
Room 2057 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3013

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Senate Business & Professions Committee
Hearing Date: June 25, 2001

Dear Senator Figueroa:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement unless the owner knew the individual was unlicensed.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have unknowingly engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: Assemblymember Lou Papan
Bill Gage, Chief Consultant
Richard Paul, Consultant

i:\00104-001\ab678sbp0620011.doc

JUN 4 2001

BACKGROUND
AB 678 Contractors

Source: Judge Quentin Kopp (650) 363-4817
Staff: Glenda Hubner 319-2019

No known similar bills before either this session or a recent previous session of legislature.

No known interim hearings on the subject matter of the bill.

Witnesses: Judge Quentin Kopp

Explanation of the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolved the problem:
Our state's policy since 1939 reflects in Section 7131 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

Existing law prohibits any unlicensed contractor from bringing or maintaining an action to recover compensation in any court in this state. Currently 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

This bill would clarify that 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.

This authorization does not apply when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

Permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.

The bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor. According to the author, the bill is intended to further encourage unlicensed contractors to become licensed, consistent with existing law.

The bill is sponsored by San Mateo County Superior Court Judge Quentin Kopp. In commenting on the need for the measure, the sponsor states:
Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, the bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid. Unjust Enrichment . According to the author, the bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid.

The Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met,

current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark , supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action.'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Please see attached letter for further explanation.

cc: Hon. Louis J. Papan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 21, 2001

MAR 2001

LJP NL GH JM HP
BG MS BY

Members of the Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: Assembly Bill No. 678

Dear Ladies and Gentlemen:

As the sponsor of Assembly Bill No. 678, I thank you for consideration of it.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know from the bill's content, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm
cc: Honorable Louis J. Papan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 13, 2001

MAR 15 2001

LJP NL GH JM HP
BG MS BY

Honorable Louis J. Papan
Room 3173
State Capitol
Sacramento, 95814

Re: Assembly Bill No. 678

Dear Lou:

Thank you for introducing Assembly Bill No. 678 which expressly authorizes a person receiving services of an unlicensed contractor to sue to recover all compensation paid to the unlicensed contractor. The bill thusly amends Section 7031 of the Business and Professions Code.

Section 7031(a) of that code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233.

Section 7031 of the Business and Professions Code reflects the intent of the Legislature that the public be protected from unqualified contractors. The licensing requirements provide minimal assurance that all persons furnishing building and construction services in California possess the requisite skill and character, understand pertinent local laws and codes, and know the

rudiments of administering a contracting business. The obvious intent of Section 7031 is to discourage persons who have not complied with the licensing requirements from offering or providing their unlicensed services for compensation. Section 7031 controls, despite any perceived injustice to the unlicensed contractor. It represents a legislative finding that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness to an unlicensed party. AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed.

The legislative intent set forth above should be manifested in a committee analysis of the bill, as well as by a published letter to the Assembly Journal of Proceedings.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

JUL 19 2000

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
NORTHERN BRANCH COURT
1050 MISSION ROAD
SOUTH SAN FRANCISCO, CALIFORNIA 94080

QUENTIN L. KOPP
JUDGE

PHONE (650) 877-5435
FAX (650) 615-0875

July 18, 2000

Louis J. Papan, Esq.
660 El Camino Real
Millbrae, California 94030

Dear Lou:

I enclose a copy of the recent California Court of Appeal decision in Cooper v. Westbrook Torrey Hills, LP.

You will note on page 7295 of the enclosure that the court, in an unpublished portion of the opinion, refers to the state law preventing an unlicensed building contractor from recovering fees but not requiring any refund of fees already paid an unlicensed contractor.

I think California law should be amended to require the refund of fees paid an unlicensed contractor. While I've observed a few criminal actions against unlicensed contractors during my 18 months as a superior court judge, I don't believe those cases receive much in the way of intensive attention. Permitting recovery of fees paid an unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement don't seem to do.

Please advise me of a time at which we may confer.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

Enclosure

We therefore conclude that section 53088.7 prevents a cable television operator from charging a delinquency fee in excess of $4.75, irrespective of whether the cable television operator designates part of that sum a delinquency fee and part a franchise fee. It does not prevent a cable television operator from passing through franchise fees provided that the total fee imposed upon the customer's delinquency does not exceed $4.75.

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Manibog shall recover his costs on appeal.

CROSKEY, J.

We Concur:
KLEIN, P. J.
ALDRICH, J.

CIVIL PROCEDURE

Reasonable expenses necessary to acquire a bond are to be awarded to prevailing party absent contrary evidence in the record.

Cite as 2000 Daily Journal D.A.R. 7293

HARRY G. COOPER,
Plaintiff and Appellant,
v.
WESTBROOK TORREY HILLS, LP,
Defendant and Respondent.

No. D033909
(Super. Ct. No. 707261)
California Court of Appeal
Fourth Appellate District
Division One
Filed July 6, 2000

CERTIFIED FOR PARTIAL PUBLICATION[1]

APPEAL from an order of the Superior Court of San Diego County, Vincent DiFiglia, Judge. Reversed and remanded with directions.

Solomon, Ward, Seidenwurm & Smith, Richard E. McCarthy and Daniel E. Gardenswartz, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Linda D. Fox and Karin Dougan Vogel, for Defendant and Respondent.

Plaintiff Harry G. Cooper appeals from an order denying his motion to recover from defendant Westbrook Torrey Hills, LP, (Westbrook),[2] costs Cooper incurred in making a cash deposit which stayed foreclosure proceedings initiated by Westbrook. Cooper contends the loan costs are recoverable under rule 26(c), California Rules of Court.[3] We agree with Cooper and reverse the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Cooper and Westbrook owned adjacent parcels of land they wished to develop. Toward that end, Cooper, Westbrook and other adjoining landowners entered into a Development Agreement with the City of San Diego (the City) and a separate Agreement Among Developers (AAD) with each other dated June 14, 1989. The agreement with City required Westbrook and Cooper to pay the City the cost of infrastructure improvements that the City would make.[4] In addition, Westbrook, Cooper and other

[1] *Under California Rules of Court, rule 976(b) and 976.1, the introductory paragraph, Factual and Procedural Background, Discussion I and Conclusion are certified for publication.*

[2] Formerly AG Land Associates, LLC, and AGLL Corporation.

[3] All rule references are to the California Rules of Court unless otherwise stated.

[4] The City agreed to provide a fire station, a highway interchange, a detention basin and complete other projects which benefited each of the landowners.

First, Westbrook relies on *Sequoia Vacuum Systems* v. *Stransky* (1964) 229 Cal.App.2d 281. In *Sequoia*, the court held rule 26(c) only allows recovery of a premium on a surety bond and therefore refused to award the expenses associated with a deposit in lieu of a bond because it was not a specifically enumerated cost. (*Id.* at p. 289.) Westbrook also relies on *Golf West of Kentucky, Inc.* v. *Life Investors, Inc.* (1986) 178 Cal.App.3d 313, in which the court held rule 26(c) prohibited recovery of costs to collateralize a surety bond because such costs were not specifically enumerated. (*Id.* at pp. 316-317.)

Finally, Westbrook relies on *Geldermann, Inc.* v. *Bruner* (1992) 10 Cal.App.4th 640, where the court also refused to award costs incurred in the process of securing a letter of credit in order to collateralize a surety bond because this cost was not specifically listed in rule 26(c). (*Id.* at p. 644.) In reaching this conclusion, the *Geldermann* court put the Legislature on notice that rule 26(c) led to inequitable results. The court stated rule 26(c) "ignores the commercial realities of today which may require an expenditure for a letter of credit to serve as security," and further noted that "[f]airness in this case would compel [plaintiff] to reimburse [defendant] for the cost of the letter of credit." (*Id.* at p. 644.) The court further advised the defendant to make his argument to the Judicial Council, the body charged with amending and adopting California Rules of Court. (*Ibid.*)

The Judicial Council responded directly to the *Geldermann* court's concern by adding, as of January 1, 1994, subpart 6 to rule 26(c) and expressly permitting recovery of any "other expense" needed to obtain a bond, including the cost of obtaining a letter of credit. (Rule 26(c)(6); see also 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 819, p. 845.)

Westbrook argues that the amendment to the rule is a strict one directed solely at the situations present in *Geldermann* and *Golf West*, that is, costs associated with obtaining a surety bond. However, as Cooper points out, under section 995.730 we are required to treat a bond and a deposit in lieu of a bond as equivalents. Because under rule 26(c)(6) the cost of obtaining a bond is recoverable, the cost of making a cash deposit is also recoverable. Thus, contrary to the trial court's finding, Cooper was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

[This Part Is Not Certified for Publication]

II

As we have noted, in addition to determining Cooper's expenses were not recoverable under rule 26(c), in the alternative the trial court found that if it had the power to award costs it would not do so. Although we agree that our review of this alternative aspect of the trial court's ruling is limited to determining whether there has been an abuse of discretion (Citizens for Responsible Development v. City of West Hollywood (1995) 39 Cal.App.4th 490, 506), on this record we agree with Cooper that such an abuse occurred.

In moving to tax Cooper's costs, Westbrook argued that his interest expenses were unnecessary because Cooper could have paid the amounts due under the AAD "under protest" and recovered them from Westbrook following his successful appeal. However, Cooper did offer to pay Westbrook the amount due so long as Westbrook agreed to repay the money in the event Cooper was successful on appeal. Westbrook refused Cooper's offer. As Cooper points out, such an agreement was probably necessary because although the law prevents an unlicensed contractor from recovering fees, it does not require any refund of fees paid to an unlicensed contractor. (See Culbertson v. Cicek (1964) 225 Cal.App.2d 451, 453.) Thus on this record there was no basis upon which the trial court could find that the expense of either a bond or a deposit was avoidable by way of voluntary payment of the underlying obligation.

Westbrook further argued the method Cooper chose in staying the foreclosure was more costly than obtaining a surety bond. However this argument was not an adequate basis upon which to deny costs altogether.

Finally, Westbrook argued that allowing Cooper to recover his loan costs was grossly unfair in light of the $1.6 million windfall Cooper received by virtue of our judgment. In some respects, we are sympathetic to this argument. Having provided Cooper with such a large uncompensated benefit, it is somewhat harsh to require that Westbrook provide Cooper with any further compensation. However, the trial court's power to deny or reduce costs under rule 26(c) is limited to costs which are either unnecessary or unreasonable. (See Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131-132 [interpreting similar provisions of Code Civ. Proc., § 1032].) The trial court has no general power to reduce costs, otherwise proper, on the basis that it would impose an undue burden on a party. Rather, that is a power which is reserved to a reviewing court in making an award of costs under rule 26(a). (Ramirez v. St. Paul Fire & Marine Ins. Co. (1995) 35 Cal.App.4th 473, 478.) "Only the reviewing court is empowered to depart from the usual rule for awarding costs when 'the interests of justice require it,' as by directing the parties to bear their own costs, by awarding costs to other than the nominal prevailing party, or by apportioning costs among the parties. [Citations.]"[a] (Ibid.)

[End of Part Not Certified for Publication]

CONCLUSION

Because there was no basis in the record upon which the trial court could properly deny Cooper's request for the interest costs he incurred in making the deposit needed to stay foreclosure pending his prior appeal, the trial court's order must be reversed. On remand the trial court is directed to award Cooper such interest expenses as it finds were reasonable and necessary.

Order reversed; Cooper to recover his costs of appeal.

BENKE, J.

We concur:
WORK, Acting P.J.
McINTYRE, J.

[a] *Because our remittitur in the prior appeal has issued, the only means by which our award of costs may be altered is by way of an application to recall the remittitur. (Ramirez v. St. Paul Fire & Marine Ins. Co., supra, 35 Cal.App.4th at p. 478; rule 25(d).) No such application has been made.*

landowners agreed to improve their respective parcels in a number of respects, including for instance altering existing soil levels. The AAD made Westbrook, Cooper and other adjoining landowners financially responsible for the cost of these improvements.

Westbrook supervised and advanced the cost of approximately $1.6 million in improvements to Cooper's property. The improvements were required under the Development Agreement and Cooper secured the amounts advanced by Westbrook with a deed of trust on his land.

However, at no relevant time did Westbrook hold a California contractor's license. After learning that Westbrook did not have a contractor's license, Cooper stopped making payments to Westbrook. In response to Cooper's failure to pay for improvements it had made, Westbrook recorded a notice of default under the deed of trust.

In order to prevent the foreclosure proceeding from moving forward, Cooper filed suit against Westbrook on January 17, 1997, seeking declaratory and injunctive relief. Cooper alleged that as an unlicensed contractor, Westbrook could not recover any compensation for the improvements it had made to Cooper's property. (Bus. & Prof. Code, § 7028, subd. (a).)

On August 21, 1997, the trial court, on stipulated facts, entered judgment for Westbrook and determined that under the circumstances of the case, Westbrook was not required hold a contractor's license to perform work on Cooper's nd.

Westbrook re-noticed the default and foreclosure sale under the Deed of Trust on September 9, 1997. On September 10, 1997, Cooper filed a notice of appeal.

Because its other attempts to stay foreclosure were unsuccessful,[5] Cooper asked the trial court to set an amount for an undertaking. The trial court set an amount of $2.5 million, one and one-half times the amount of the disputed debt.

In order to finance the undertaking, Cooper obtained a $3 million loan and deposited $2.5 million of the loan proceeds with the clerk of the court. Cooper used the remaining loan proceeds to pay interest on the loan.

On November 16, 1998, we reversed the trial court's judgment. (D029421.) We found that Westbrook's improvements to Cooper's property were work which required a contractor's license and that accordingly Cooper was not required to pay for the work. (Bus. & Prof. Code, s7028, subd. (a).)

On remand, Cooper filed a memorandum in which he sought to recover over $200,000 in expenses he had incurred in making his deposit. The trial court determined rule 26(c) does not permit a party to recover the expenses associated with making a cash deposit in lieu of a surety bond. In the alternative the trial court stated that even if it had discretion to award them to Cooper, "I would not in my discretion award Mr. Cooper the costs."

We reverse the trial court's order.

DISCUSSION

I

Rule 26(c)(6) requires that reasonable expenses necessary to acquire a bond are to be awarded to the prevailing party. Code of Civil Procedure[6] section 995.730 explicitly requires that a deposit given in place of a bond must be treated in the same manner as a bond. Thus, contrary to the trial court's ruling, the reasonable expense incurred in making a deposit must be awarded a prevailing party such as Cooper.

In pertinent part, rule 26(c) provides: "The party to whom costs are awarded may recover only the following, when actually incurred: . . . (5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary and (6) other expense reasonably necessary to procure the surety bond, such as the expense of acquiring a letter of credit required as collateral for the bond."

In 1982, the Legislature enacted a specific provision governing deposits in lieu of bonds, section 995.730. Section 995.730 provides: "A deposit given instead of a bond has the *same force and effect*, is treated the same, and is subject to the same conditions, liability, and statutory provisions, including provisions for increase and decrease of amount, as the bond." (§ 995.730, italics added.)

The Judicial Council is empowered to "adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute." (Cal. Const., art. VI, § 6, italics added; *see also* 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § 204, pp. 272-273.) "It is settled that in order to comply with the constitutional requirement of consistency with statutory law, a rule of court must not conflict with the statutory intent." (*Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, 364; *see* also *People v. Hall* (1994) 8 Cal.4th 950, 960-963; *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 25-26; cf. *Cox v. Superior Court* (1993) 19 Cal.App.4th 1046, 1050-1051 [applying a similar provision of Gov. Code, § 68070 authorizing courts to make local rules "'not inconsistent with law'"].) If a court cannot construe a rule of court to be consistent with a statute, the rule is invalid. (*Maldonado v. Superior* Court (1984) 162 Cal.App.3d 1259, 1265.) The hierarchy is well established: "the rules promulgated by the Judicial Council are subordinate to statutes." (*Id.* at p. 1265.)

In order to read rule 26(c) consistent with section 995.730, the reasonable or necessary costs associated with procuring a deposit in lieu of a bond must be awarded to a prevailing party.[7] Nevertheless, Westbrook maintains that rule 26(c) only permits recovery of the costs specified by the rule. In making this argument, Westbrook relies on three cases which, in light of later statutory and rule changes, are no longer controlling.

---

[5] Cooper requested that Westbrook voluntarily stay its non-judicial foreclosure pending the appeal in a letter dated September 23, 1997. Westbrook rejected this request.

Cooper filed a petition for writ of supersedeas with this court requesting a stay of the foreclosure. The writ was denied. Cooper then offered Westbrook an irrevocable letter of credit for the entire amount claimed, plus interest, in exchange for Westbrook's agreement to forego foreclosure pending appeal. Westbrook rejected Cooper's proposal and continued with the foreclosure proceeding. Cooper went so far as to offer to pay the full amount of the claimed debt pending appeal if Westbrook would agree not to argue that payment would render the appeal moot. Westbrook declined this proposal as well.

[6] Unless otherwise noted, all statutory references are to the California Code of Civil Procedure.

[7] Other jurisdictions have considered this issue and have reached similar conclusions. Costs of collateral are recoverable even though the security was not labeled a "bond." In *Trans World Airlines, Inc. v. Hughes* (2d Cir. 1975) 515 F.2d 173, *cert.* denied (1976) 424 U.S. 934, the Second Circuit awarded the prevailing defendant the reasonable costs of a letter of credit, as well as the cost of required quarterly audits of the defendant company's net worth, both of which were provided "in lieu of providing a supersedes bond." (*Id.* at p. 177.)

MODIFICATION
CRIMINAL LAW AND PROCEDURE

Officer's attempt to obtain consent to search does not require Miranda warning, whether or not defendant is in custody.

Cite as 2000 Daily Journal D.A.R. 7296

THE PEOPLE,
Plaintiff and Respondent,
v.
NOLAN BREWER,
Defendant and Appellant.

No. B132056
(Super. Ct. No. SA030961)
California Court of Appeal
Second Appellate District
Division Five
Filed July 5, 2000

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on June 8, 2000, and certified for publication be modified in the following particulars:

On page 12[1], third sentence of the second full paragraph, beginning "In reaching this conclusion" is deleted and the following sentence is inserted in its place

> In reaching this conclusion, the court in Whitfield relied on the holding of the United States Supreme Court in Oregon v. Elstad (1985) 470 U.S. 298, 308 [the fruit of the poisonous tree concept does not apply to require suppression when the alleged fruit is a subsequent statement voluntarily given by a suspect since a mere failure to admonish a suspect does not render the initial statement coerced although the initial statement is inadmissible because it is a violation of Miranda], and Michigan v. Tucker (1974) 417 U.S. 433, 446 [the fruit of the poisonous tree concept does not apply to "fruits" of a statement taken in contravention of Miranda where the alleged violation is a failure to admonish].

In the sentence quoted above, after the words "violation of Miranda]," add as footnote 8 the following footnote, which will require renumbering of all subsequent footnotes:

> [8] In Dickerson v. United States (2000) ___ U.S. ___ [2000 Daily Journal D.A.R. 6789], the Supreme Court made clear that Miranda warnings are constitutionally based, and also reaffirmed the validity of the ruling in Elstad that the fruit of the poisonous tree doctrine developed in Fourth Amendment cases does not apply in cases involving non-coercive violations of Miranda because "unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment." (Id. at p. ___ [2000 Daily Journal D.A.R. at p. 6792].)

On page 14[2], first sentence of the first full paragraph, before the word "violation," the word "technical" is deleted so that the sentence reads:

> We will examine the record to determine if the trial court was correct in its determination that defendant's statements were not coerced even though there was a violation of Miranda due to a failure to admonish defendant about his rights.

There is no change in judgment.

* WEISMAN, J.* TURNER, P.J. ARMSTRONG, J.

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

[1] See Daily Appellate Report of June 12, 2000, page 6086, column 2, lines 13-29, first full paragraph.

[2] See Daily Appellate Report of June 12, 2000, page 6087, column 1, line 4, second full paragraph.

SENATE BUSINESS AND PROFESSIONS COMMITTEE

LIZ FIGUEROA, Chair

Background Information Sheet

SUBMIT 2 COPIES OF ALL BACKGROUND INFORMATION

MEASURE: AB 678 **AUTHOR:** Papan **DATE:** 5/30/01

This measure has been referred to the Senate Business and Professions Committee. Please forward the following information to the Committee, Room 2053, ~~**WITHIN ONE WEEK**~~ 6/1/01. The bill will not be set for a hearing until the Committee has received the background information. Please call the Committee Assistant, Kathy Sullivan at **445-3435** if you have any questions about this request. Attach additional pages if necessary.

PLEASE TYPE OR PRINT

1) **Who is the source of the bill? What person, organization or entity requested introduction?**

2) **What does your bill do?**

3) **Describe existing law on this issue.**

4) **What's wrong with existing law? Why is this bill needed?**

Rm. 3173

LIVINGSTON & MATTESICH

LJP NL GH JM HP
BG MS BY

PARKE D. TERRY
LEGISLATIVE ADVOCATE

2001

May 3, 2001

Honorable John Campbell, Vice Chair
Assembly Business & Professions Committee
Room 2174 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3015

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Assembly Business & Professions Committee
Hearing Date: May 8, 2001

Dear Assembly Member Campbell:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: The Honorable Lou Papan
Mr. Jay Greenwood, Chief Consultant
Assembly Republican Caucus
California Landscape Contractors Association

Copy to Chuck 5/4/01

i:\00104-001\ab678abp0503011.doc

Construction Industry Legislative Council

MEMBERS

American Subcontractors Association / California:
Bay Area Chapter
Capital City Chapter
Inland Empire Chapter
Los Angeles/Orange Co. Chapter
Redwood Empire Chapter
San Diego Chapter

Builders Exchanges Service Center

California Conference of Mason Contractor Associations, Inc.:
Fresno Chapter
Los Angeles County Chapter
Monterey-Santa Cruz Chapter
North Bay Chapter
Orange County Chapter
Sacramento Chapter
Saddleback Valley Chapter
San Bernardino Chapter
San Diego Chapter
San Francisco Chapter
Santa Barbara-Ventura Chapter
South Bay Chapter

California Landscape Contractors Association

California Building Material Dealers Association

Floor Covering Association/ Central Coast Counties

Insulation Contractors Association

Institute of Heating and Air Conditioning Industries Inc.

Painting & Decorating Contractors of California:
East Bay Counties PDCA
Los Angeles County PDCA
Tri-County Chapter PDCA

Plumbing, Heating & Cooling Contractors of California

Santa Barbara Contractors Association

Woodwork Institute of California

CILC ADVOCATE
Skip Daum

APR 23 2001

DATE: April 21, 2001

TTO: Assembly Judiciary Committee

LJP __ NL __ GH __ JM __ HP __
BG __ MS __ BY __

FR: Skip Daum, Advocate

Re: **AB 678 (Papan) ..... SUPPORT**

This bill would authorize a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract.

It is a direct method of clamping down on underground contractor activity.

1401 P STREET, #412 SACRAMENTO, CALIFORNIA 95814
PHONE: (916) 658-0250 FAX: (916) 658-0252

AB 678 (PAPAN)
CONTRACTORS

Version: 5/1/01 Last Amended
Vote: Majority
None

Vice-Chair: Robert Pacheco
Tax or Fee Increase: No

Authorizes a person who utilizes an unlicensed contractor to bring an action in court for recovery of all compensation paid to the unlicensed contractor for performance of any act or contract.

The "None" is based on a balance between the effort of this bill to further disourage home improvement contracts with unlicensed contractors and not otherwise provide an unjust enrichment of one who should have known that he or she was dealing with an unlicensed contractor.

Policy Question

Should any person, who had no actual knowledge at the time of entering an agreement with a contractor that the contractor was not licensed, be authorized to 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?

Summary

Authorizes a person who utilizes the services of an unlicensed contractor to 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.

Support

Quentin Kopp, Superior Court Judge of San Mateo County (Sponsor), California Landscape Contractors Association.

Opposition

None on file.

Assembly Republican Judiciary Votes (8-0) 4/24/01
Ayes: Bates, Harman
Noes: None
Abs. / NV: Robert Pacheco

Assembly Republican Business and Professions Votes (10-0) 5/8/01
Ayes: Bogh, Kelley, Leach
Noes: None
Abs. / NV: John Campbell

Assembly Republican **Votes** (0-0) 1/1/01
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/01
Ayes: None
Noes: None
Abs. / NV: None

Arguments In Support of the Bill

1. The sponsor, Judge Quentin Kopp of San Mateo County Superior Court, contends that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.
2. In response to whether such recovery should be authorized to persons who knowingly entered into such contracts with an unlicensed contractor, the sponsor cites *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997-998 (and other appellate holdings) for upholding the proposition that the law should not recognize a contractual or quasi-contractual right for an unlicensed contractor to bring suit to collect for services performed from one who knew of his or her unlicensed status. The sponsor apparently views the policy against any compensation to an unlicensed contractor under such circumstances as so paramount to accord no balance of consideration to such contractor. To further reinforce his position, short of further statutory clarification of the provision or legislative intent language, the sponsor would apparently have his letter on such point published in the Assembly Journal (which would enable future courts reviewing cases involving purchasers with knowledge of an unlicensed contractor to accept the letter as further clarification of the legislature's intent on such issue).

Arguments In Opposition to the Bill

It could be argued that notwithstanding a strong public policy to deter unlicensed persons from engaging in the contracting business, that a party who knowingly ("with unclean hands" as it is stated in the equity side of the law) enters an agreement with an unlicensed contractor should not necessarily be unjustly enriched to the extent that he or she would be entitled to recover all compensation paid to the unlicensed contractor for labor and services performed and material provided. The author's 5/1/01 amendment addresses this issue to the extent of actual knowledge of a purchaser of such service, but does

not address situations where the purchaser either under a reasonable person and circumstances standard should have known or otherwise deliberately avoids taking action to determine that the contractor possesses a valid license and then brings suit to recover compensation paid.

Fiscal Effect

Unknown.

Comments

Existing law provides that except for the judicial doctrine of substantial compliance, 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 performance of any contract for which a license is required under the provisions of this law without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract. The merits of the cause of action brought by the person shall have no effect on such prohibition. Such prohibition shall not apply to contractors who are each individually licensed under the provisions of this law but who fail to comply with other law as specified. (Business & Professions Code Section 7031).

Policy Consultant: Mark Redmond/ Laura Zuniga 5/10/01
Fiscal Consultant:

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Senate Floor Analyses AB678, 2001

That the attached transcript of 16 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE: 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 69-2, 5/14/01 - See last page for vote

SUBJECT: Unlicensed contractors

SOURCE: Judge Quentin L. Kopp

DIGEST: This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS: Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Comments

Purpose. According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

Background. In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (7/17/01)

Judge Quentin L. Kopp (source)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments
American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

ARGUMENTS IN SUPPORT: The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg

NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE .

****** END ******

This SFA has NOT been filed.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

AB 678

Version:

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: ~~5/1/01 in Assembly~~ 7-3-01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE: 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

ASSEMBLY FLOOR: 69-2, 5/14/01 - See last page for vote

SUBJECT: Unlicensed contractors

SOURCE: Judge Quentin L. Kopp

DIGEST: This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS: Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill:

1. Authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

2. Specifies this authorization is not applicable when the person who uses the services of an unlicensed contractor knows the contractor was unlicensed prior to the time any payments are made.

Comments

Purpose. According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

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FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified >)

Judge Quentin L. Kopp (source)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments

American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

OPPOSITION: (Verified >)

>

ARGUMENTS IN SUPPORT: The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

ARGUMENTS IN OPPOSITION: >

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg

NOES: Hollingsworth, Mountjoy

CP:kb 6/28/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

Peterson, Claudia

From: Hubner, Glenda [Glenda.Hubner@asm.ca.gov]
Sent: Tuesday, July 17, 2001 10:54 PM
To: Peterson, Claudia (SENMX1)
Subject: RE: AB 678

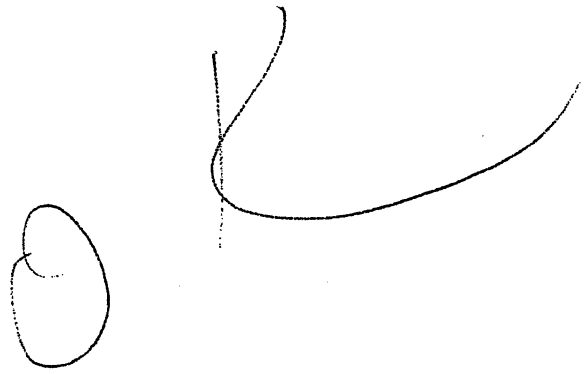
The Support in the Senate Business and Professions Analysis is the most current for Assembly Bill 678.

Thank you,
Glenda Hubner

-----Original Message-----
From: Peterson, Claudia [mailto:Claudia.Peterson@sen.ca.gov]
Sent: Monday, July 16, 2001 2:13 PM
To: Hubner, Glenda (ASMMX1)
Subject: AB 678

Hi Glenda:

Please send your list of support/opposition to AB 678. Thanks, Claudia



SENATE FLOOR ANALYSES WORKSHEET CONSULTANT: SD

THIRD READING / CONSENT / (DO AHEAD)

Bill No.: AB 678
Author: Papan (D)
Amended: 5-21-01 in Assembly
Vote Required:: 2/

SEN. D v P COM.: Vote 6-0, Date 6-25
SEN. APPROP. COM.: Vote _____, Date _____ / 28.8 / NONFISCAL
SEN. FLOOR: Vote _____, Date _____ / ASSY FLOOR: Vote 69-2, Date 5-24

SUBJECT: A
SOURCE: Judge Question re Kopp

DIGEST:
D

ANALYSIS:
FISCAL EFFECT: C / Appropriation: No Fiscal Committee: No Local: No
SUPPORT: Verification Date _____

F

OPPOSITION: Verification Date _____

ARGUMENTS IN SUPPORT:
F

ARGUMENTS IN OPPOSITION:

Hearing Date: June 25, 2001 Bill No: AB 678

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS

Senator Liz Figueroa, Chair

Bill No: AB 678 Author: Papan
As Amended: May 1, 2001 Fiscal: Yes

SUBJECT: Unlicensed contractors.

SUMMARY: Allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Existing law:

1) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2) Provides that contracting without a license shall be a misdemeanor.

3) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill:

1) Authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

2) Specifies that this authorization is not applicable when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

FISCAL EFFECT: None

COMMENTS:

1. **Purpose.** According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law "in a way which criminal

sanctions and enforcement do not seem to do."

2. **Background.** In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

   Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

3. **Arguments in Support.** The sponsor asserts that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

4. **Requested Amendments.** The Committee has been contacted to raise a concern that this "well-intentioned" bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work. Due to the late timing of this concern, this issue is being discussed with the author and sponsor and should be addressed in committee.

SUPPORT AND OPPOSITION:

Support: Judge Quentin L. Kopp (sponsor)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with Amendments:

American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

Opposition: None on file

Consultant: Robin Hartley

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 678

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE : 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 69-2, 5/14/01 - See last page for vote

SUBJECT : Unlicensed contractors

SOURCE : Judge Quentin L. Kopp

DIGEST : This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS : Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

CONTINUED

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Comments

Purpose. According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

Background. In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed

contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: ~~(Unable to verify support and opposition at time of this writing.)~~ Unopposed 7-17-01

Judge Quentin L. Kopp (source)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments
American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

ARGUMENTS IN SUPPORT: The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg
NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 3, 2001
POSITION: No position

BILL NUMBER: AB 678
AUTHOR: L. Papan

BILL SUMMARY

This bill would allow a person who uses the services of an unlicensed contractor to bring a court action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

FISCAL SUMMARY

The Department of Consumer Affairs indicates that this bill would not result in any fiscal impact.

COMMENTS

Existing law:

- Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board (CSLB) if the total price of the job is $500 or more.
- Provides that contracting without a license is a misdemeanor.

This bill would authorize a person who uses the services of an unlicensed contractor to bring a court action to recover all compensation paid to the unlicensed contractor for performance of any service or contract. By allowing a court action against an unlicensed contractor, this bill would likely encourage unlicensed contractors to become licensed. Therefore, this bill appears to protect the public from unqualified contractors by encouraging licensure through CSLB.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2001-2002 FC	2002-2003 FC	2003-2004	Fund Code
1230/Contractors	SO	No		---------- No/Minor Fiscal Impact ----------			0735

Fund Code	Title
0735	Contractors License Fund

Analyst/Principal (0222) M. Caballin — Date 7/12/01
Program Budget Manager S. Calvin Smith — Date 7/13/01
Department Deputy Director — Date

Governor's Office: By: Date: Position Noted / Position Approved / Position Disapproved

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Senate Business & Professions Committee, AB678, 2001

That the attached transcript of 59 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

2001-2002 COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 678
AUTHOR : Papan
TOPIC : Contractors.
TYPE OF BILL :

INACTIVE BILL	NON-URGENCY
NON-APPROPRIATION	MAJORITY VOTE
NON-STATE-MANDATED LOCAL PROGRAM	NON-FISCAL
NON-TAX-LEVY	

BILL HISTORY

2001

Sept. 4	Chaptered by Secretary of State - Chapter 226, Statutes of 2001.
Sept. 1	Approved by the Governor.
Aug. 24	Enrolled and to the Governor at 4 p.m.
Aug. 20	Senate amendments concurred in. To enrollment. (Ayes 57. Noes 10. Page 3065.)
July 20	In Assembly. Concurrence in Senate amendments pending. May be considered on or after July 22 pursuant to Assembly Rule 77.
July 20	Read third time, passed, and to Assembly. (Ayes 23. Noes 10. Page 2136.)
July 17	Read second time. To third reading.
July 17	From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
July 3	Read second time, amended, and re-referred to Com. on APPR.
July 2	From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 6. Noes 0.).
May 21	Referred to Com. on B. & P.
May 14	In Senate. Read first time. To Com. on RLS. for assignment.
May 14	Read third time, passed, and to Senate. (Ayes 69. Noes 2. Page 1595.)
May 10	Read second time. To third reading.
May 9	From committee: Do pass. (Ayes 10. Noes 0.) (May 8).
May 2	Re-referred to Com. on B. & P.
May 1	Read second time and amended.
Apr. 30	From committee: Amend, do pass as amended, and re-refer to Com. on B. & P. (Ayes 8. Noes 0.) (April 24).
Mar. 12	Referred to Coms. on JUD. and B. & P.
Feb. 23	From printer. May be heard in committee March 25.
Feb. 22	Read first time. To print.

Hearing Date: June 25, 2001 Bill No: AB 678

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
Senator Liz Figueroa, Chair

Bill No: AB 678 Author: Papan
As Amended: May 1, 2001 Fiscal: Yes

SUBJECT: Unlicensed contractors.

SUMMARY: Allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Existing law:

1) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2) Provides that contracting without a license shall be a misdemeanor.

3) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill:

1) Authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

2) Specifies that this authorization is not applicable when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

FISCAL EFFECT: None

COMMENTS:

1. **Purpose.** According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law "in a way which criminal

sanctions and enforcement do not seem to do."

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4. **Requested Amendments.** The Committee has been contacted to raise a concern that this "well-intentioned" bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work. Due to the late timing of this concern, this issue is being discussed with the author and sponsor and should be addressed in committee.

SUPPORT AND OPPOSITION:

Support: Judge Quentin L. Kopp (sponsor)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with Amendments:

American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

Opposition: None on file

Consultant: Robin Hartley

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 678

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE: 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 69-2, 5/14/01 - See last page for vote

SUBJECT: Unlicensed contractors

SOURCE: Judge Quentin L. Kopp

DIGEST: This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS: Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

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CONTINUED

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Comments

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contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (7/17/01)

Judge Quentin L. Kopp (source)

California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments

American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

ARGUMENTS IN SUPPORT: The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs,

Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg

NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - LIST
Type record number(s), separated by commas, and press ENTER (Example: 10,205)
or type 'ALL' for detail votes and press ENTER

RECORD NUMBER	VOTE DATE	VOTE LOCATION VOTE MOTION/PASSFAIL
AB 678 By Papan	Topic: Contractors.	
9413	08/20/01	ASM. FLOOR AB 678 Papan Concurrence in Senate Amendments (Ayes 57. Noes 10.) (PASS)
9202	07/20/01	SEN. FLOOR Assembly 3rd Reading AB678 Papan By Kuehl (Ayes 23. Noes 10.) (PASS)
7266	06/25/01	SEN. B. & P. Do pass as amended, and re-refer to the Committee on Appropriations. (Ayes 6. Noes 0.) (PASS)
4062	05/14/01	ASM. FLOOR AB 678 Papan Assembly Third Reading (Ayes 69. Noes 2.) (PASS)
3624	05/08/01	ASM. B. & P. Do pass. (Ayes 10. Noes 0.) (PASS)
2360	04/24/01	ASM. JUD. Do pass as amended and be re-referred to the Committee on Business and Professions. (Ayes 8. Noes 0.) (PASS)

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - ROLL CALL

MEASURE: AB 678
TOPIC: Contractors.
DATE: 08/20/01
LOCATION: ASM. FLOOR
MOTION: AB 678 Papan Concurrence in Senate Amendments
(AYES 57. NOES 10.) (PASS)

AYES
****

Alquist	Aroner	Bates	Bogh
Briggs	Calderon	Canciamilla	Cardoza
Cedillo	Chan	Chavez	Chu
Cohn	Corbett	Correa	Cox
Diaz	Dickerson	Dutra	Frommer
Goldberg	Harman	Havice	Jackson
Keeley	Kehoe	Kelley	Koretz
Leach	Leslie	Liu	Longville
Lowenthal	Maddox	Maldonado	Matthews
Nakano	Negrete McLeod	Oropeza	Rod Pacheco
Papan	Pavley	Reyes	Richman
Salinas	Shelley	Steinberg	Strickland
Strom-Martin	Vargas	Washington	Wayne
Wesson	Wiggins	Wright	Zettel
Hertzberg			

NOES
****

Aanestad	Ashburn	Bill Campbell	John Campbell
Cogdill	Daucher	Hollingsworth	Mountjoy
Runner	Wyman		

ABSENT, ABSTAINING, OR NOT VOTING
****

Cardenas	Firebaugh	Florez	Horton
La Suer	Leonard	Migden	Nation
Robert Pacheco	Pescetti	Simitian	Thomson
Wyland			

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - ROLL CALL

MEASURE: AB 678
TOPIC: Contractors.
DATE: 07/20/01
LOCATION: SEN. FLOOR
MOTION: Assembly 3rd Reading AB678 Papan By Kuehl
(AYES 23. NOES 10.) (PASS)

AYES
****

Alarcon	Alpert	Burton	Chesbro
Costa	Dunn	Escutia	Figueroa
Karnette	Kuehl	Machado	Morrow
Murray	O'Connell	Ortiz	Perata
Polanco	Romero	Soto	Speier
Torlakson	Vasconcellos	Vincent	

NOES
****

Ackerman	Battin	Brulte	Haynes
Johnson	Margett	McClintock	Monteith
Oller	Poochigian		

ABSENT, ABSTAINING, OR NOT VOTING
****

Bowen	Johannessen	Knight	McPherson
Peace	Scott	Sher	

MEASURE: AB 678
TOPIC: Contractors.
DATE: 06/25/01
LOCATION: SEN. B. & P.

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - ROLL CALL
MOTION: Do pass as amended, and re-refer to the Committee on Appropriations.
(AYES 6. NOES 0.) (PASS)

AYES
****

Figueroa	Johannessen	Machado	Morrow
O'Connell	Polanco		

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

Murray

MEASURE: AB 678
TOPIC: Contractors.
DATE: 05/14/01
LOCATION: ASM. FLOOR
MOTION: AB 678 Papan Assembly Third Reading
(AYES 69. NOES 2.) (PASS)

AYES
****

Aanestad	Alquist	Aroner	Bates
Bogh	Briggs	Calderon	Bill Campbell
John Campbell	Canciamilla	Cardenas	Cardoza
Cedillo	Chan	Chavez	Cogdill
Cohn	Corbett	Correa	Cox
Daucher	Diaz	Dickerson	Dutra

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - ROLL CALL

Firebaugh	Florez	Frommer	Goldberg
Harman	Havice	Horton	Keeley
Kehoe	Kelley	Koretz	Leach
Leonard	Leslie	Liu	Longville
Lowenthal	Maddox	Maldonado	Matthews
Migden	Nakano	Nation	Negrete McLeod
Oropeza	Papan	Pavley	Pescetti
Reyes	Richman	Runner	Salinas
Shelley	Steinberg	Strickland	Strom-Martin
Thomson	Vargas	Washington	Wayne
Wesson	Wiggins	Wright	Zettel
Hertzberg			

NOES
****

Hollingsworth	Mountjoy

ABSENT, ABSTAINING, OR NOT VOTING
****

Ashburn	Jackson	La Suer	Robert Pacheco
Rod Pacheco	Simitian	Wyland	Wyman
Vacancy			

MEASURE: AB 678
TOPIC: Contractors.
DATE: 05/08/01
LOCATION: ASM. B. & P.
MOTION: Do pass.
(AYES 10. NOES 0.) (PASS)

AYES
****

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - ROLL CALL

Correa	Bogh	Cedillo	Chavez
Corbett	Kelley	Leach	Cardoza
Nation	Wesson		

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

John Campbell	Koretz

MEASURE: AB 678
TOPIC: Contractors.
DATE: 04/24/01
LOCATION: ASM. JUD.
MOTION: Do pass as amended and be re-referred to the Committee on Business and Professions.
(AYES 8. NOES 0.) (PASS)

AYES
****

Steinberg	Bates	Corbett	Dutra
Harman	Longville	Shelley	Wayne

NOES
****

UNOFFICIAL BALLOT

Display 2001-2002 Vote Information - ROLL CALL
ABSENT, ABSTAINING, OR NOT VOTING
****

Robert Pacheco Jackson

UNOFFICIAL BALLOT

Bill: AB 678 2001-2002

Author: Papan
Topic: Contractors.

06/25/01 SEN. B. & P.
Do pass as amended, and re-refer to the Committee on Appropriations.

AYES 6 NOES 0 (PASS)

05/14/01 ASM. FLOOR
AB 678 Papan Assembly Third Reading

AYES 69 NOES 2 (PASS)

05/08/01 ASM. B. & P.
Do pass.

AYES 10 NOES 0 (PASS)

04/24/01 ASM. JUD.
Do pass as amended and be re-referred to the Committee on Business and Professions.

AYES 8 NOES 0 (PASS)

CONCURRENCE IN SENATE AMENDMENTS
AB 678 (Papan)
As Amended July 3, 2001
Majority vote

ASSEMBLY:	69-2	(May 14, 2001)	SENATE:	23-10	(July 20, 2001)

Original Committee Reference: JUD.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

The Senate amendments delete language providing that, in the above situation, a person may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

AS PASSED BY THE ASSEMBLY, this bill provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would

specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for

performance of any act or contract. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Amendments taken in the Senate remove language which provided

that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor. The Senate deleted this language in order to more strongly encourage contractors to become licensed.

Analysis Prepared by : Saskia Kim / JUD. / (916) 319-2334

FN: 0002130

Hearing Date:June 25, 2001	Bill No:AB 678

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
Senator Liz Figueroa, Chair

Bill No: AB 678 Author:Papan
As Amended:May 1, 2001 Fiscal:Yes

SUBJECT: Unlicensed contractors.

SUMMARY: Allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Existing law:

1) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2) Provides that contracting without a license shall be a misdemeanor.

3) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill:

1) Authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

2) Specifies that this authorization is not applicable when

the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior

to the time that any payments are made.

FISCAL EFFECT: None.

COMMENTS:

1. **Purpose.** According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

2. **Background.** In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

3. **Arguments in Support.** The sponsor asserts that the Legislature has intended that the public be protected

from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical

policy of our state but strengthens that policy substantially."

4. **Requested Amendments.** The Committee has been contacted to raise a concern that this "well-intentioned" bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work. Due to the late timing of this concern, this issue is being discussed with the author and sponsor and should be addressed in committee.

SUPPORT AND OPPOSITION:

Support: Judge Quentin L. Kopp (sponsor)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with Amendments:

American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

Opposition: None on file

Consultant:Robin Hartley

AB 678
Page 1

ASSEMBLY THIRD READING
AB 678 (Papan)
As Amended May 1, 2001
Majority vote

JUDICIARY 8 -0 BUSINESS & PROFESSIONS 10-0

Ayes:	Steinberg, Bates, Corbett, Dutra, Harman, Longville, Shelley, Wayne	Ayes:	Correa, Bogh, Cedillo, Chavez, Corbett, Kelley, Leach, Cardoza, Nation, Wesson

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract unless the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract, unless the person knew that

the contractor was unlicensed prior to making any payments to the contractor. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of this bill, stating:

> Section 7031(a) of [the Business and Professions] code

requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an

unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ?

AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in

original.)

Analysis Prepared by : Saskia Kim / JUD. / (916) 319-2334

FN: 0000626

Date of Hearing: April 24, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
AB 678 (Papan) - As Introduced: February 22, 2001

SUBJECT : UNLICENSED CONTRACTORS

KEY ISSUE : SHOULD AN INDIVIDUAL WHO USES THE SERVICES OF AN UNLICENSED CONTRACTOR BE SPECIFICALLY AUTHORIZED TO BRING AN ACTION TO RECOVER FEES ALREADY PAID TO THE UNLICENSED CONTRACTOR EVEN THOUGH THE CONTRACTOR HAS FULLY PERFORMED AND THE INDIVIDUAL MAY KNOW THE CONTRACTOR IS UNLICENSED?

SYNOPSIS

This Measure Allows Individuals Who Use The Services Of An Unlicensed Contractor To Bring An Action To Recover All Compensation Already Paid To The Unlicensed Contractor. According To The Author, The Measure Is Intended To Further Encourage Unlicensed Contractors To Become Licensed, Consistent With Existing Law. However, The Measure Arguably Allows Individuals Who Use Unlicensed Contractors To Be Unjustly Enriched By Permitting Them To Recover Compensation Already Paid Despite The Fact That The Contractor Has Fully Performed And Despite Knowing That The Contractor Is Unlicensed. An Author's Amendment To Address This Concern Is Contained In The Analysis.

SUMMARY : Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

EXISTING LAW :

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total

price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: The bill as currently in print is not keyed fiscal.

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for the measure, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this measure is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring

any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of the bill, stating:

AB 678
Page 3

Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ?

> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Unjust Enrichment. According to the author, this bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to

the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed and even if they knew the contractor was unlicensed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid. Furthermore, those who knew that the contractor they were employing was unlicensed arguably have "unclean hands," but under this bill they would still be allowed to recover.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified

contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ?'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Author's Amendment. Committee staff discussed with the sponsor whether the bill unfairly results in unjustly enriching an individual who uses an unlicensed contractor knowing that the contractor is unlicensed and then sues to recover compensation paid, despite the full performance of the contractor. The sponsor has agreed the bill should be amended to preclude those individuals who use the services of an unlicensed contractor from being able to recover compensation already paid if they knew that the contractor was unlicensed.

The language of this author's amendment is limited to the individual's actual knowledge of whether or not the contractor is licensed, rather than constructive knowledge of that fact. As a result, the concern may be raised that individuals will purposely remain ignorant as to whether or not a contractor they are employing is licensed. The Committee may therefore wish to discuss with the author and the sponsor whether the bill should be amended to also preclude individuals from being able to recover compensation if they "should have known" that the contractor was unlicensed.

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (sponsor)

Opposition

None on file

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

AB 678
Page 1

Date of Hearing: May 8, 2001

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Lou Correa, Chair
AB 678 (Papan) - As Amended: May 1, 2001

SUBJECT: Unlicensed contractors.

SUMMARY: Authorizes persons who use the services of an unlicensed contractor to bring an action in court to recover all compensation paid to the unlicensed contractor for performance of any act or contract. However, this authorization does not apply when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

EXISTING LAW

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: Unknown. The bill is not keyed fiscal.

COMMENTS:

Purpose of the Bill. The bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor. According to the author, the bill is intended to further encourage unlicensed contractors to become licensed, consistent with existing law.

The bill is sponsored by San Mateo County Superior Court Judge Quentin Kopp. In commenting on the need for the measure, the sponsor states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, the bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Unjust Enrichment. According to the author, the bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor

to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of

the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ?'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (Sponsor)

Opposition

None on file.

Analysis Prepared by: Jay Greenwood / B. & P. / (916) 319-3301

CONCURRENCE IN SENATE AMENDMENTS
AB 678 (Papan)
As Amended July 3, 2001
Majority vote

ASSEMBLY:	69-2	(May 14, 2001)	SENATE:	23-10	(July 20, 2001)

Original Committee Reference: JUD.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

The Senate amendments delete language providing that, in the above situation, a person may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

AS PASSED BY THE ASSEMBLY, this bill provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for

performance of any act or contract. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Amendments taken in the Senate remove language which provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor. The Senate deleted this language in order to more strongly encourage contractors to become licensed.

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0002130

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RN0116878 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 678
AS AMENDED IN ASSEMBLY MAY 1, 2001

Amendment 1

On page 2, line 12, strike out the comma, strike out lines 13 and 14, and insert a period

- 0 -

L73

Attn: Glenda

PHILIP M. VERMEULEN
GOVERNMENTAL RELATIONS

3457 CASTLE CREEK CT. ROSEVILLE, CA 95661
(916) 784-7055 PHONE (916) 784-2852 FAX
email: phil@pvgov.com
website: www.pvgov.com

June 19, 2001

TO: Members of the Senate Business and Professions Committee

RE: AB 678 (Papan) – Support With Amendment

Dear Members:

On behalf of my clients, the Engineering Contractors' Association, the California Fence Contractors' Association, the Sacramento Builders' Exchange, the Marin Builders' Exchange, the Flasher/Barricade Association, the Flasher/Barricade Association and the California Chapter of the American Fence Contractors' Association, I urge your committee's **SUPPORT IF AMENDED OF AB 678 (Papan)** when it is heard in committee on June 25.

For your information, my clients total over 20,000 licensed contractors in the state. It has been our goal for years to eliminate unlicensed contractors. Unfortunately, as the bill currently reads, we fear that the bill could well end up affecting legitimately licensed contractors. This is something that we are sure that Superior Court Judge Quentin Kopp, as sponsor of the bill, would not want to do.

Our specific concern deals with the issue of incidental/supplemental work as it is defined in Section 7059 of the Business and Professions Code. A portion of Section 7059 states:

"Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he or she is licensed, is incidental and supplemental to the performance of the work in the craft for which the specialty contractor is licensed."

There has never been a set number for what constitutes incidental/supplemental work, because it varies according to the specific job. A good example of this type of work is as follows. A licensed C-36 plumber is installing a dishwasher. His craft involves running the pipe to the dishwasher. Part of installing the dishwasher entails connecting the electricity to the appliance; however, technically this is C-10 electrical contractor work.

According to the incidental/supplemental section, this would be construed as incidental/supplemental work which is necessary to complete the project. Hence, a C-36 plumbing contractor would be permitted to connect the electrical wire to enable the dishwasher to work.

While a plumber, literally, installs dishwashers every day, there could come a time when that work was challenged by an electrician. If, by chance, the staff member at the Contractors' Board interpreted this as being work that only a C-10 electrical contractor could perform, then the plumber would technically not be licensed. Thus, if AB 678 were to pass as it presently reads, the customer could claim that he didn't need to pay the contractor.

This example is a simplification, but it accurately explains how the well-intentioned AB 678 could cause severe problems for the legitimate contractors in California. Therefore, our attorney, Mr. Sam Abdulaziz, has a suggested amendment which should resolve our problem and allow us to fully support AB 678.

On Page 3, Line 1 of the bill, we request that the word "and" be replaced with "or". Thus, the line would read, "licensure, and (3) did not know or reasonably should not have".....

With this minor change, Mr. Abdulaziz believes that the unintentional trap against legitimate contractors will be resolved. We will also be delighted to actively support the bill. I will also be prepared to testify in support of the measure in committee next Monday.

Thank you for your assistance in this matter.

Sincerely,

Philip M. Vermeulen
Legislative Advocate

cc: Sam Abdulaziz

Hartley, Robin

From: Gage, Bill
Sent: Saturday, June 16, 2001 1:04 PM
To: 'Philip M Vermeulen'
Cc: Hartley, Robin
Subject: RE:

Hi Phil:
Robin is doing the analysis on the bill. Please give her a call. If Sam has concerns he can submit a letter to the Committee. Thanks.
-----Original Message-----
From: Philip M Vermeulen [mailto:pvermeulen@rcsis.com]
Sent: Friday, June 15, 2001 4:20 PM
To: Bill Gage
Subject:

Hi Bill:
Who's the staff person on AB 678 (Papan)? I've been talking to Sam about concerns that we have with the bill. While we fully support going after unlicensed contractors, there are times when licensed contractors could also be caught in the bill's trap. For example, incidental/supplemental work is left vague in the law intentionally since each job constitutes different conditions. Technically, a licensed contractor could be caught in the bill's trap if he was ruled not to be doing incidental work even though on a previous job of similiar conditions, the contractor was ruled ok.
There needs to be some kind of language in the bill to address the legitimate contractor so that he's not caught up. Again, we support the intentions of the bill. It's just that as it reads now the legitimate contractor could well be the one who gets screwed.
I'd be happy to have Sam talk with us on a conference call about it if you'd like (or whomever is working the bill).
Thanks,

Phil

JUN 21 2001

LIVINGSTON & MATTESICH

PARKE D. TERRY
LEGISLATIVE ADVOCATE

June 20, 2001

Honorable Liz Figueroa, Chair
Senate Business & Professions Committee
Room 2057 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3013

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Senate Business & Professions Committee
Hearing Date: June 25, 2001

Dear Senator Figueroa:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement unless the owner knew the individual was unlicensed.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have unknowingly engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: Assemblymember Lou Papan
Bill Gage, Chief Consultant
Richard Paul, Consultant

i:\00104-001\ab678sbp0620011.doc

Rm. 3173

LIVINGSTON & MATTESICH

LJP NL GH JM HP
BG MS BY

PARKE D. TERRY
LEGISLATIVE ADVOCATE

2001

May 3, 2001

Honorable John Campbell, Vice Chair
Assembly Business & Professions Committee
Room 2174 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-5938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 5013

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Assembly Business & Professions Committee
Hearing Date: May 8, 2001

Dear Assembly Member Campbell:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: The Honorable Lou Papan
Mr. Jay Greenwood, Chief Consultant
Assembly Republican Caucus
California Landscape Contractors Association

Copy to Committee
5/4/01

i:\00104-001\ab678abp0503011.doc

14-2001 01:43pm From-SENATE B&P COMMITTEE 916-324-0917 T-178 P.013/014 F-352

Construction Industry Legislative Council

MEMBERS

American Subcontractors Association / California:
Bay Area Chapter
Capitol City Chapter
Inland Empire Chapter
Los Angeles/Orange Co. Chapter
Redwood Empire Chapter
San Diego Chapter

Builders Exchanges Service Center

California Conference of Mason Contractor Associations, Inc.:
Fresno Chapter
Los Angeles County Chapter
Monterey-Santa Cruz Chapter
North Bay Chapter
Orange County Chapter
Sacramento Chapter
Saddleback Valley Chapter
San Bernardino Chapter
San Diego Chapter
San Francisco Chapter
Santa Barbara-Ventura Chapter
South Bay Chapter

California Landscape Contractors Association

California Building Material Dealers Association

Floor Covering Association/ Central Coast Counties

Insulation Contractors Association

Institute of Heating and Air Conditioning Industries Inc.

Painting & Decorating Contractors of California:
East Bay Counties PDCA
Los Angeles County PDCA
Tri-County Chapter PDCA

Plumbing, Heating & Cooling Contractors of California

Santa Barbara Contractors Association

Woodwork Institute of California

CILC ADVOCATE
Skip Daum

APR 23 2001

DATE: April 21, 2001

TTO: Assembly Judiciary Committee

LJP ___ NL ___ GH ___ JM ___ HP ___
BG ___ MS ___ BY ___

FR: Skip Daum, Advocate

Re: **AB 678 (Papan)..... SUPPORT**

This bill would authorize a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract.

It is a direct method of clamping down on underground contractor activity.

1401 P STREET, #412 SACRAMENTO, CALIFORNIA 95814
PHONE: (916) 658-0250 FAX: (916) 658-0252

JUN 4 2001

BACKGROUND
AB 678 Contractors

Source: Judge Quentin Kopp (650) 363-4817
Staff: Glenda Hubner 319-2019

No known similar bills before either this session or a recent previous session of legislature.

No known interim hearings on the subject matter of the bill.

Witnesses: Judge Quentin Kopp

Explanation of the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolved the problem:
Our state's policy since 1939 reflects in Section 7131 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

Existing law prohibits any unlicensed contractor from bringing or maintaining an action to recover compensation in any court in this state. Currently 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

This bill would clarify that 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.

This authorization does not apply when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

Permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.

The bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor. According to the author, the bill is intended to further encourage unlicensed contractors to become licensed, consistent with existing law.

The bill is sponsored by San Mateo County Superior Court Judge Quentin Kopp. In commenting on the need for the measure, the sponsor states:
Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, the bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.
Unjust Enrichment . According to the author, the bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid.

The Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met,

current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark , supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ?'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Please see attached letter for further explanation.

cc: Hon. Louis J. Papan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 21, 2001

MAR 2001

LJP __ NL __ GH __ JM __ HP __
BG __ MS __ BY __

Members of the Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: Assembly Bill No. 678

Dear Ladies and Gentlemen:

As the sponsor of Assembly Bill No. 678, I thank you for consideration of it.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know from the bill's content, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm
cc: Honorable Louis J. Papan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 13, 2001

MAR 15 2001

LJP NL GH JM HP
BG MS BY

Honorable Louis J. Papan
Room 3173
State Capitol
Sacramento, 95814

Re: Assembly Bill No. 678

Dear Lou:

Thank you for introducing Assembly Bill No. 678 which expressly authorizes a person receiving services of an unlicensed contractor to sue to recover all compensation paid to the unlicensed contractor. The bill thusly amends Section 7031 of the Business and Professions Code.

Section 7031(a) of that code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233.

Section 7031 of the Business and Professions Code reflects the intent of the Legislature that the public be protected from unqualified contractors. The licensing requirements provide minimal assurance that all persons furnishing building and construction services in California possess the requisite skill and character, understand pertinent local laws and codes, and know the

rudiments of administering a contracting business. The obvious intent of Section 7031 is to discourage persons who have not complied with the licensing requirements from offering or providing their unlicensed services for compensation. Section 7031 controls, despite any perceived injustice to the unlicensed contractor. It represents a legislative finding that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness to an unlicensed party. AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed.

The legislative intent set forth above should be manifested in a committee analysis of the bill, as well as by a published letter to the Assembly Journal of Proceedings.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

JUL 19 2000

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
NORTHERN BRANCH COURT
1050 MISSION ROAD
SOUTH SAN FRANCISCO, CALIFORNIA 94080

QUENTIN L. KOPP
JUDGE

PHONE (650) 877-5435
FAX (650) 615-0875

July 18, 2000

Louis J. Papan, Esq.
660 El Camino Real
Millbrae, California 94030

Dear Lou:

I enclose a copy of the recent California Court of Appeal decision in Cooper v. Westbrook Torrey Hills, LP.

You will note on page 7295 of the enclosure that the court, in an unpublished portion of the opinion, refers to the state law preventing an unlicensed building contractor from recovering fees but not requiring any refund of fees already paid an unlicensed contractor.

I think California law should be amended to require the refund of fees paid an unlicensed contractor. While I've observed a few criminal actions against unlicensed contractors during my 18 months as a superior court judge, I don't believe those cases receive much in the way of intensive attention. Permitting recovery of fees paid an unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement don't seem to do.

Please advise me of a time at which we may confer.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

Enclosure

We therefore conclude that section 53088.7 prevents a cable television operator from charging a delinquency fee in excess of $4.75, irrespective of whether the cable television operator designates part of that sum a delinquency fee and part a franchise fee. It does not prevent a cable television operator from passing through franchise fees provided that the total fee imposed upon the customer's delinquency does not exceed $4.75.

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Manibog shall recover his costs on appeal.

CROSKEY, J.

We Concur:
KLEIN, P. J.
ALDRICH, J.

CIVIL PROCEDURE

Reasonable expenses necessary to acquire a bond are to be awarded to prevailing party absent contrary evidence in the record.

Cite as 2000 Daily Journal D.A.R. 7293

HARRY G. COOPER,
Plaintiff and Appellant,
v.
WESTBROOK TORREY HILLS, LP,
Defendant and Respondent.

No. D033909
(Super. Ct. No. 707261)
California Court of Appeal
Fourth Appellate District
Division One
Filed July 6, 2000

CERTIFIED FOR PARTIAL PUBLICATION[1]

APPEAL from an order of the Superior Court of San Diego County, Vincent DiFiglia, Judge. Reversed and remanded with directions.

Solomon, Ward, Seidenwurm & Smith, Richard E. McCarthy and Daniel E. Gardenswartz, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Linda D. Fox and Karin Dougan Vogel, for Defendant and Respondent.

Plaintiff Harry G. Cooper appeals from an order denying his motion to recover from defendant Westbrook Torrey Hills, LP, (Westbrook),[2] costs Cooper incurred in making a cash deposit which stayed foreclosure proceedings initiated by Westbrook. Cooper contends the loan costs are recoverable under rule 26(c), California Rules of Court.[3] We agree with Cooper and reverse the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Cooper and Westbrook owned adjacent parcels of land they wished to develop. Toward that end, Cooper, Westbrook and other adjoining landowners entered into a Development Agreement with the City of San Diego (the City) and a separate Agreement Among Developers (AAD) with each other dated June 14, 1989. The agreement with City required Westbrook and Cooper to pay the City the cost of infrastructure improvements that the City would make.[4] In addition, Westbrook, Cooper and other

[1] *Under California Rules of Court, rule 976(b) and 976.1, the introductory paragraph, Factual and Procedural Background, Discussion I and Conclusion are certified for publication.*

[2] Formerly AG Land Associates, LLC, and AGLL Corporation.

[3] All rule references are to the California Rules of Court unless otherwise stated.

[4] The City agreed to provide a fire station, a highway interchange, a [illegible] station basin and complete other projects which benefited each of the landowners.

First, Westbrook relies on *Sequoia Vacuum Systems* v. *Stransky* (1964) 229 Cal.App.2d 281. In *Sequoia*, the court held rule 26(c) only allows recovery of a premium on a surety bond and therefore refused to award the expenses associated with a deposit in lieu of a bond because it was not a specifically enumerated cost. (*Id.* at p. 289.) Westbrook also relies on *Golf West of Kentucky, Inc.* v. *Life Investors, Inc.* (1986) 178 Cal.App.3d 313, in which the court held rule 26(c) prohibited recovery of costs to collateralize a surety bond because such costs were not specifically enumerated. (*Id.* at pp. 316-317.)

Finally, Westbrook relies on *Geldermann, Inc.* v. *Bruner* (1992) 10 Cal.App.4th 640, where the court also refused to award costs incurred in the process of securing a letter of credit in order to collateralize a surety bond because this cost was not specifically listed in rule 26(c). (*Id.* at p. 644.) In reaching this conclusion, the *Geldermann* court put the Legislature on notice that rule 26(c) led to inequitable results. The court stated rule 26(c) "ignores the commercial realities of today which may require an expenditure for a letter of credit to serve as security," and further noted that "[f]airness in this case would compel [plaintiff] to reimburse [defendant] for the cost of the letter of credit." (*Id.* at p. 644.) The court further advised the defendant to make his argument to the Judicial Council, the body charged with amending and adopting California Rules of Court. (*Ibid.*)

The Judicial Council responded directly to the *Geldermann* court's concern by adding, as of January 1, 1994, subpart 6 to rule 26(c) and expressly permitting recovery of any "other expense" needed to obtain a bond, including the cost of obtaining a letter of credit. (Rule 26(c)(6); see also 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 819, p. 845.)

Westbrook argues that the amendment to the rule is a strict one directed solely at the situations present in *Geldermann* and *Golf West*, that is, costs associated with obtaining a surety bond. However, as Cooper points out, under section 995.730 we are required to treat a bond and a deposit in lieu of a bond as equivalents. Because under rule 26(c)(6) the cost of obtaining a bond is recoverable, the cost of making a cash deposit is also recoverable. Thus, contrary to the trial court's finding, Cooper was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

[This Part Is Not Certified for Publication]

II

As we have noted, in addition to determining Cooper's expenses were not recoverable under rule 26(c), in the alternative the trial court found that if it had the power to award costs it would not do so. Although we agree that our review of this alternative aspect of the trial court's ruling is limited to determining whether there has been an abuse of discretion (Citizens for Responsible Development v. City of West Hollywood (1995) 39 Cal.App.4th 490, 506), on this record we agree with Cooper that such an abuse occurred.

In moving to tax Cooper's costs, Westbrook argued that his interest expenses were unnecessary because Cooper could have paid the amounts due under the AAD "under protest" and recovered them from Westbrook following his successful appeal. However, Cooper did offer to pay Westbrook the amount due so long as Westbrook agreed to repay the money in the event Cooper was successful on appeal. Westbrook refused Cooper's offer. As Cooper points out, such an agreement was probably necessary because although the law prevents an unlicensed contractor from recovering fees, it does not require any refund of fees paid to an unlicensed contractor. (See ~~Culbertson v. Cizek (1964) 225 Cal.App.2d 451, 453.~~) Thus on this record there was no basis upon which the trial court could find that the expense of either a bond or a deposit was avoidable by way of voluntary payment of the underlying obligation.

Westbrook further argued the method Cooper chose in staying the foreclosure was more costly than obtaining a surety bond. However this argument was not an adequate basis upon which to deny costs altogether.

Finally, Westbrook argued that allowing Cooper to recover his loan costs was grossly unfair in light of the $1.6 million windfall Cooper received by virtue of our judgment. In some respects, we are sympathetic to this argument. Having provided Cooper with such a large uncompensated benefit, it is somewhat harsh to require that Westbrook provide Cooper with any further compensation. However, the trial court's power to deny or reduce costs under rule 26(c) is limited to costs which are either unnecessary or unreasonable. (See Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131-132 [interpreting similar provisions of Code Civ. Proc., § 1032].) The trial court has no general power to reduce costs, otherwise proper, on the basis that it would impose an undue burden on a party. Rather, that is a power which is reserved to a reviewing court in making an award of costs under rule 26(a). (Ramirez v. St. Paul Fire & Marine Ins. Co. (1995) 35 Cal.App.4th 473, 478.) "Only the reviewing court is empowered to depart from the usual rule for awarding costs when 'the interests of justice require it,' as by directing the parties to bear their own costs, by awarding costs to other than the nominal prevailing party, or by apportioning costs among the parties. [Citations.]"[8] (Ibid.)

[End of Part Not Certified for Publication]

CONCLUSION

Because there was no basis in the record upon which the trial court could properly deny Cooper's request for the interest costs he incurred in making the deposit needed to stay foreclosure pending his prior appeal, the trial court's order must be reversed. On remand the trial court is directed to award Cooper such interest expenses as it finds were reasonable and necessary.

Order reversed; Cooper to recover his costs of appeal.

BENKE, J.

We concur:
WORK, Acting P.J.
McINTYRE, J.

[8] *Because our remittitur in the prior appeal has issued, the only means by which our award of costs may be altered is by way of an application to recall the remittitur. (Ramirez v. St. Paul Fire & Marine Ins. Co., supra, 35 Cal.App.4th at p. 478; rule 25(d).) No such application has been made.*

JUL-31-2000 17:20 P.09/10

landowners agreed to improve their respective parcels in a number of respects, including for instance altering existing soil levels. The AAD made Westbrook, Cooper and other adjoining landowners financially responsible for the cost of these improvements.

Westbrook supervised and advanced the cost of approximately $1.6 million in improvements to Cooper's property. The improvements were required under the Development Agreement and Cooper secured the amounts advanced by Westbrook with a deed of trust on his land.

However, at no relevant time did Westbrook hold a California contractor's license. After learning that Westbrook did not have a contractor's license, Cooper stopped making payments to Westbrook. In response to Cooper's failure to pay for improvements it had made, Westbrook recorded a notice of default under the deed of trust.

In order to prevent the foreclosure proceeding from moving forward, Cooper filed suit against Westbrook on January 17, 1997, seeking declaratory and injunctive relief. Cooper alleged that as an unlicensed contractor, Westbrook could not recover any compensation for the improvements it had made to Cooper's property. (Bus. & Prof. Code, § 7028, subd. (a).)

On August 21, 1997, the trial court, on stipulated facts, entered judgment for Westbrook and determined that under the circumstances of the case, Westbrook was not required to hold a contractor's license to perform work on Cooper's land.

Westbrook re-noticed the default and foreclosure sale under the Deed of Trust on September 9, 1997. On September 10, 1997, Cooper filed a notice of appeal.

Because its other attempts to stay foreclosure were unsuccessful,[5] Cooper asked the trial court to set an amount for an undertaking. The trial court set an amount of $2.5 million, one and one-half times the amount of the disputed debt.

In order to finance the undertaking, Cooper obtained a $3 million loan and deposited $2.5 million of the loan proceeds with the clerk of the court. Cooper used the remaining loan proceeds to pay interest on the loan.

On November 16, 1998, we reversed the trial court's judgment. (D029421.) We found that Westbrook's improvements to Cooper's property were work which required a contractor's license and that accordingly Cooper was not required to pay for the work. (Bus. & Prof. Code, s7028, subd. (a).)

On remand, Cooper filed a memorandum in which he sought to recover over $200,000 in expenses he had incurred in making his deposit. The trial court determined rule 26(c) does not permit a party to recover the expenses associated with making a cash deposit in lieu of a surety bond. In the alternative the trial court stated that even if it had discretion to award them to Cooper, "I would not in my discretion award Mr. Cooper the costs."

We reverse the trial court's order.

DISCUSSION

I

Rule 26(c)(6) requires that reasonable expenses necessary to acquire a bond are to be awarded to the prevailing party. Code of Civil Procedure[6] section 995.730 explicitly requires that a deposit given in place of a bond must be treated in the same manner as a bond. Thus, contrary to the trial court's ruling, the reasonable expense incurred in making a deposit must be awarded a prevailing party such as Cooper.

In pertinent part, rule 26(c) provides: "The party to whom costs are awarded may recover only the following, when actually incurred: . . . (5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary and (6) other expense reasonably necessary to procure the surety bond, such as the expense of acquiring a letter of credit required as collateral for the bond."

In 1982, the Legislature enacted a specific provision governing deposits in lieu of bonds, section 995.730. Section 995.730 provides: "A deposit given instead of a bond has the *same force and effect*, is treated the same, and is subject to the same conditions, liability, and statutory provisions, including provisions for increase and decrease of amount, as the bond." (§ 995.730, italics added.)

The Judicial Council is empowered to "adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute." (Cal. Const., art. VI, § 6, italics added; *see also* 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § 204, pp. 272-273.) "It is settled that in order to comply with the constitutional requirement of consistency with statutory law, a rule of court must not conflict with the statutory intent." (*Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, 364; *see also People v. Hall* (1994) 8 Cal.4th 950, 960-963; *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 25-26; cf. *Cox v. Superior Court* (1993) 19 Cal.App.4th 1046, 1050-1051 [applying a similar provision of Gov. Code, § 68070 authorizing courts to make local rules "'not inconsistent with law'"].) If a court cannot construe a rule of court to be consistent with a statute, the rule is invalid. (*Maldonado v. Superior Court* (1984) 162 Cal.App.3d 1259, 1265.) The hierarchy is well established: "the rules promulgated by the Judicial Council are subordinate to statutes." (*Id.* at p. 1265.)

In order to read rule 26(c) consistent with section 995.730, the reasonable or necessary costs associated with procuring a deposit in lieu of a bond must be awarded to a prevailing party.[7] Nevertheless, Westbrook maintains that rule 26(c) only permits recovery of the costs specified by the rule. In making this argument, Westbrook relies on three cases which, in light of later statutory and rule changes, are no longer controlling.

---

[5] Cooper requested that Westbrook voluntarily stay its non-judicial foreclosure pending the appeal in a letter dated September 23, 1997. Westbrook rejected this request.

Cooper filed a petition for writ of supersedeas with this court requesting a stay of the foreclosure. The writ was denied. Cooper then offered Westbrook an irrevocable letter of credit for the entire amount claimed, plus interest, in exchange for Westbrook's agreement to forego foreclosure pending appeal. Westbrook rejected Cooper's proposal and continued with the foreclosure proceeding. Cooper went so far as to offer to pay the full amount of the claimed debt pending appeal if Westbrook would agree not to argue that payment would render the appeal moot. Westbrook declined this proposal as well.

[6] Unless otherwise noted, all statutory references are to the California Code of Civil Procedure.

[7] Other jurisdictions have considered this issue and have reached similar conclusions. Costs of collateral are recoverable even though the security was not labeled a "bond." In *Trans World Airlines, Inc. v. Hughes* (2d Cir. 1975) 515 F.2d 173, *cert. denied* (1976) 424 U.S. 934, the Second Circuit awarded the prevailing defendant the reasonable costs of a letter of credit, as well as the cost of required quarterly audits of the defendant company's net worth, both of which were provided "in lieu of providing a supersedeas bond." (*Id.* at p. 177.)

0869

MODIFICATION
CRIMINAL LAW AND PROCEDURE

Officer's attempt to obtain consent to search does not require Miranda warning, whether or not defendant is in custody.

Cite as 2000 Daily Journal D.A.R. 7296

THE PEOPLE,
Plaintiff and Respondent,
v.
NOLAN BREWER,
Defendant and Appellant.

No. B132056
(Super. Ct. No. SA030961)
California Court of Appeal
Second Appellate District
Division Five
Filed July 5, 2000

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on June 8, 2000, and certified for publication be modified in the following particulars:

On page 12[1], third sentence of the second full paragraph, beginning "In reaching this conclusion" is deleted and the following sentence is inserted in its place

> In reaching this conclusion, the court in Whitfield relied on the holding of the United States Supreme Court in Oregon v. Elstad (1985) 470 U.S. 298, 308 [the fruit of the poisonous tree concept does not apply to require suppression when the alleged fruit is a subsequent statement voluntarily given by a suspect since a mere failure to admonish a suspect does not render the initial statement coerced although the initial statement is inadmissible because it is a violation of Miranda], and Michigan v. Tucker (1974) 417 U.S. 433, 446 [the fruit of the poisonous tree concept does not apply to "fruits" of a statement taken in contravention of Miranda where the alleged violation is a failure to admonish].

In the sentence quoted above, after the words "violation of Miranda]," add as footnote 8 the following footnote, which will require renumbering of all subsequent footnotes:

> [8] In Dickerson v. United States (2000) ___ U.S. ___ [2000 Daily Journal D.A.R. 6789], the Supreme Court made clear that Miranda warnings are constitutionally based, and also reaffirmed the validity of the ruling in Elstad that the fruit of the poisonous tree doctrine developed in Fourth Amendment cases does not apply in cases involving non-coercive violations of Miranda because "unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment." (Id. at p. ___ [2000 Daily Journal D.A.R. at p. 6792].)

On page 14[2], first sentence of the first full paragraph, before the word "violation," the word "technical" is deleted so that the sentence reads:

> We will examine the record to determine if the trial court was correct in its determination that defendant's statements were not coerced even though there was a violation of Miranda due to a failure to admonish defendant about his rights.

There is no change in judgment.

* WEISMAN, J.* TURNER, P.J ARMSTRONG, J.

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

[1] See Daily Appellate Report of June 12, 2000, page 6086, column 2, lines 13-29, first full paragraph.

[2] See Daily Appellate Report of June 12, 2000, page 6087, column 1, line 4, second full paragraph.

SECRETARY OF STATE, ALEX PADILLA
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State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Assembly Business & Professions Committee, AB678, 2001

That the attached transcript of 22 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

Business and Professions

Date of Hearing: 05/08/2001

BILL NO.	AB 419	AB 488	AB 585	AB 678
ACTION VOTED ON	Do pass; re-refer to Cmte on Appr	Do pass as amended	Do pass; re-refer to Cmte on Appr	Do pass
	Aye : No	Aye : No	Aye : No	Aye : No
Correa (Chair)	X :	X :	X :	X :
Campbell, John (V. Chair)	X :	X :	X :	Not Voting
Bogh	X :	X :	X :	X :
Cedillo	X :	X :	X :	X :
Chavez	X :	X :	X :	X :
Corbett	X :	X :	X :	X :
Kelley	X :	X :	X :	X :
Koretz	X :	X :	X :	Not Voting
Leach	X :	X :	X :	X :
Matthews(*Cardoza)	X :	X :	X :	X :
Nation	X :	X :	X :	X :
Wesson	X :	X :	X :	X :
	Ayes: 12 Noes: 0	Ayes: 12 Noes: 0	Ayes: 12 Noes: 0	Ayes: 10 Noes: 0

(Note: *Indicates temporary appointment. See Assembly Daily Journal.)

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RN0112538 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 678

Amendment 1
On page 2, line 8, after "contract" insert:

, unless the person knew that the contractor was unlicensed prior to the time that any payments were made to the contractor

- 0 -

L73

To desk
4/30

54400

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RN0112538 PAGE 1
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On page 2, line 8, after "contract" insert:

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- 0 -

L73

AB678 Amendments Adopted in committee 4/24

faxed to counsel 4/25

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) *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,* ***unless the person knew that the contractor was unlicensed prior to the time that any payments are made.***

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

~~(c)~~

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing herein shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

~~(d)~~

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know or reasonably should not have known that he or she was not duly licensed. Subdivision (b) of Section 143 does not apply to contractors subject to this subdivision.

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(2)REPORTS OF STANDING COMMITTEES<c2>

¶(2) Committee on Business and Professions

¶ Date of Hearing: May 08, 2001 [_]<r>

¶ Mr. Speaker: Your Committee on Business and Professions reports:

¶ Assembly Bill No. 678 (10-0)

(1)With the recommendation: Do pass. <1>

Lou Correa ,Chair
CORREA

(5)Above bill(s) ordered to second reading.

Date of Hearing: May 8, 2001

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Lou Correa, Chair
AB 678 (Papan) – As Amended: May 1, 2001

SUBJECT: Unlicensed contractors.

SUMMARY: Authorizes persons who use the services of an unlicensed contractor to bring an action in court to recover all compensation paid to the unlicensed contractor for performance of any act or contract. However, this authorization does not apply when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

EXISTING LAW

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: Unknown. The bill is not keyed fiscal.

COMMENTS:

Purpose of the Bill. The bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor. According to the author, the bill is intended to further encourage unlicensed contractors to become licensed, consistent with existing law.

The bill is sponsored by San Mateo County Superior Court Judge Quentin Kopp. In commenting on the need for the measure, the sponsor states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, the bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Unjust Enrichment. According to the author, the bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ...'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (Sponsor)

Opposition

None on file.

Analysis Prepared by: Jay Greenwood / B. & P. / (916) 319-3301

Placed in Template

Date of Hearing: April 24, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
AB 678 (Papan) – As Introduced: February 22, 2001

SUBJECT: UNLICENSED CONTRACTORS

KEY ISSUE: SHOULD AN INDIVIDUAL WHO USES THE SERVICES OF AN UNLICENSED CONTRACTOR BE SPECIFICALLY AUTHORIZED TO BRING AN ACTION TO RECOVER FEES ALREADY PAID TO THE UNLICENSED CONTRACTOR EVEN THOUGH THE CONTRACTOR HAS FULLY PERFORMED AND THE INDIVIDUAL MAY KNOW THE CONTRACTOR IS UNLICENSED?

SYNOPSIS

This Measure Allows Individuals Who Use The Services Of An Unlicensed Contractor To Bring An Action To Recover All Compensation Already Paid To The Unlicensed Contractor. According To The Author, The Measure Is Intended To Further Encourage Unlicensed Contractors To Become Licensed, Consistent With Existing Law. However, The Measure Arguably Allows Individuals Who Use Unlicensed Contractors To Be Unjustly Enriched By Permitting Them To Recover Compensation Already Paid Despite The Fact That The Contractor Has Fully Performed And Despite Knowing That The Contractor Is Unlicensed. An Author's Amendment To Address This Concern Is Contained In The Analysis.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: The bill as currently in print is not keyed fiscal.

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for the measure, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this measure is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of the bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the

capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Unjust Enrichment. According to the author, this bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed and even if they knew the contractor was unlicensed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid. Furthermore, those who knew that the contractor they were employing was unlicensed arguably have "unclean hands," but under this bill they would still be allowed to recover.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ...'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Author's Amendment. Committee staff discussed with the sponsor whether the bill unfairly results in unjustly enriching an individual who uses an unlicensed contractor knowing that the contractor is unlicensed and then sues to recover compensation paid, despite the full performance of the contractor. The sponsor has agreed the bill should be amended to preclude those individuals who use the services of an unlicensed contractor from being able to recover compensation already paid if they knew that the contractor was unlicensed.

The language of this author's amendment is limited to the individual's actual knowledge of whether or not the contractor is licensed, rather than constructive knowledge of that fact. As a result, the concern may be raised that individuals will purposely remain ignorant as to whether or not a contractor they are employing is licensed. The Committee may therefore wish to discuss with the author and the sponsor whether the bill should be amended to also preclude individuals from being able to recover compensation if they "should have known" that the contractor was unlicensed.

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (sponsor)

Opposition

None on file

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

Date of Hearing: May 8, 2001

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Lou Correa, Chair
AB 678 (Papan) – As Amended: May 1, 2001

SUBJECT: UNLICENSED CONTRACTORS

KEY ISSUE: SHOULD AN INDIVIDUAL WHO USES THE SERVICES OF AN UNLICENSED CONTRACTOR BE SPECIFICALLY AUTHORIZED TO BRING AN ACTION TO RECOVER FEES ALREADY PAID TO THE UNLICENSED CONTRACTOR EVEN THOUGH THE CONTRACTOR HAS FULLY PERFORMED AND THE INDIVIDUAL MAY KNOW THE CONTRACTOR IS UNLICENSED?

SYNOPSIS

This Measure Allows Individuals Who Use The Services Of An Unlicensed Contractor To Bring An Action To Recover All Compensation Already Paid To The Unlicensed Contractor. According To The Author, The Measure Is Intended To Further Encourage Unlicensed Contractors To Become Licensed, Consistent With Existing Law. However, The Measure Arguably Allows Individuals Who Use Unlicensed Contractors To Be Unjustly Enriched By Permitting Them To Recover Compensation Already Paid Despite The Fact That The Contractor Has Fully Performed And Despite Knowing That The Contractor Is Unlicensed. An Author's Amendment To Address This Concern Is Contained In The Analysis.

SUMMARY: Seek to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

EXISTING LAW

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: The bill as currently in print is not keyed fiscal.

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for the measure, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this measure is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of the bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Unjust Enrichment. According to the author, this bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed and even if they knew the contractor was unlicensed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid. Furthermore, those who knew that the contractor they were employing was unlicensed arguably have "unclean hands," but under this bill they would still be allowed to recover.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ...'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Author's Amendment. Committee staff discussed with the sponsor whether the bill unfairly results in unjustly enriching an individual who uses an unlicensed contractor knowing that the contractor is unlicensed and then sues to recover compensation paid, despite the full performance of the contractor. The sponsor has agreed the bill should be amended to preclude those individuals who use the services of an unlicensed contractor from being able to recover compensation already paid if they knew that the contractor was unlicensed.

The language of this author's amendment is limited to the individual's actual knowledge of whether or not the contractor is licensed, rather than constructive knowledge of that fact. As a result, the concern may be raised that individuals will purposely remain ignorant as to whether or not a contractor they are employing is licensed. The Committee may therefore wish to discuss with the author and the sponsor whether the bill should be amended to also preclude individuals from being able to recover compensation if they "should have known" that the contractor was unlicensed.

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (Sponsor)

Opposition

None on file.

Analysis Prepared by: Jay Greenwood / B. & P. / (916) 319-3301

LIVINGSTON & MATTESICH

PARKE D. TERRY
LEGISLATIVE ADVOCATE

May 3, 2001

Honorable Lou Correa, Chair
Assembly Business & Professions Committee
Room 6025 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3013

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Assembly Business & Professions Committee
Hearing Date: May 8, 2001

Dear Assembly Member Correa:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: The Honorable Lou Papan
Mr. Jay Greenwood, Chief Consultant
Assembly Republican Caucus
California Landscape Contractors Association

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(004)

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
BACKGROUND INFORMATION
ASSEMBLY BILL 678
ASSEMBLYMEMBER PAPAN

BACKGROUND
AB 678 Contractors

Source: Judge Quentin Kopp (650) 363-4817
Staff: Glenda Hubner 319-2019

No known similar bills before either this session or a recent previous session of legislature.

No known interim hearings on the subject matter of the bill.

Witnesses: Judge Quentin Kopp

Explanation of the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolved the problem:
Our state's policy since 1939 reflects in Section 7131 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

Existing law prohibits any unlicensed contractor from bringing or maintaining an action to recover compensation in any court in this state. Currently 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

This bill would clarify that 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.

Permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.

Please see attached letter for further explanation.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 13, 2001

MAR 15 2001

LJP NL GH JM HP
BG MS BY

Honorable Louis J. Papan
Room 3173
State Capitol
Sacramento, 95814

Re: Assembly Bill No. 678

Dear Lou:

Thank you for introducing Assembly Bill No. 678 which expressly authorizes a person receiving services of an unlicensed contractor to sue to recover all compensation paid to the unlicensed contractor. The bill thusly amends Section 7031 of the Business and Professions Code.

Section 7031(a) of that code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233.

Section 7031 of the Business and Professions Code reflects the intent of the Legislature that the public be protected from unqualified contractors. The licensing requirements provide minimal assurance that all persons furnishing building and construction services in California possess the requisite skill and character, understand pertinent local laws and codes, and know the

rudiments of administering a contracting business. The obvious intent of Section 7031 is to discourage persons who have not complied with the licensing requirements from offering or providing their unlicensed services for compensation. Section 7031 controls, despite any perceived injustice to the unlicensed contractor. It represents a legislative finding that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness to an unlicensed party. AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed.

The legislative intent set forth above should be manifested in a committee analysis of the bill, as well as by a published letter to the Assembly Journal of Proceedings.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

MAR 2[illegible] 2001

March 23, 2001

File
AB 678 File

Honorable Louis J. Papan
Assemblyman, Nineteenth District
California Legislature
State Capitol
P.O. Box 94249
Sacramento, CA 94249-0019

Attn Bill
This letter should go to policy committee

LJP | NL GH JM HP
BG MS BY

Re: Assembly Bill No. 678

Dear Lou:

As the sponsor of Assembly Bill No. 678, I thank you for its introduction.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Author's Bill File Papan, AB678, 2001

That the attached transcript of 47 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

B&P Code §7048

7048. (a) This chapter does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items, is less than five hundred dollars ($500), that work or operations being considered of casual, minor, or inconsequential nature.

This exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than five hundred dollars ($500) for the purpose of evasion of this chapter or otherwise.

This exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor or that he or she is qualified to engage in the business of a contractor.

(b) Any person performing work costing less than five hundred dollars ($500) who is not licensed under this chapter shall disclose to the purchaser of the work the fact that he or she is not licensed by the Contractors' State License Board.

At the time of making a bid or prior to entering into a contract to perform work for less than five hundred dollars ($500), whichever occurs first, the person performing the work shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

"I, (individual's name), AM NOT LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD.
STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE
LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING--IF THE TOTAL
PRICE OF THE JOB IS $500 OR MORE (INCLUDING LABOR AND MATERIALS).
LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE
PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH
A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY
BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES."

The person performing the work shall maintain for four years a copy of the above notice signed by the purchaser of the work acknowledging receipt of this notice.

The exemption provided by this section does not apply to any person failing to provide the required notice to the purchaser of the work.

This notice need only be provided once to the same purchaser of subsequent work.

, unless the person knew that the contractor was unlicensed prior to the time that any payments were made to the contractor .

AB 678 (Papan) August 20, 2001
File Item 42, Concurrence in Senate Amendments

Mr. Speaker and Members

AB 678 allows a customer to recover from an unlicensed contractor monies paid for work performed by a contractor required to be licensed but in fact not licensed under California's Contractor's Licensing Law.

The Senate amendments correct an Assembly amendment which obviated the public policy behind the law and which amendment was based upon a misconception of the law namely works of 500 of or fewer dollars which are not included in the law.

With the long history of "knowledge" not being a factor in the application of our contractors licensing law and the public policy supporting that position, I expressed concern that the purpose of the statute would unravel if knowledge were injected as a factor. If knowledge were an exception, I suspect that unlicensed contractors would insert a provision into their agreements that disclosed their unlicensed status. Many consumers would not notice the disclosure, but the unlicensed contractor would claim that the consumers knew because of the disclosure, however obscure it was.

The Contractors' Law is designed to protect the public from dishonest and incompetent contractors by requiring licensure and administrative oversight. It's impossible to assure that everyone performing contracting services is licensed. Case law stretching back more than 50 years has denied recovery under our Business and Professions Code for unlicensed contractor work even if the person ordering the work knew that person performing the work was unlicensed. Courts have also traditionally rejected the notion that denying payment to the unlicensed contractor was unfair when the person benefited by the work had knowledge of the contractor's unlicensed status or was otherwise not entirely innocent.

I ask for your aye vote in concurrence.
Thank you

CONCURRENCE IN SENATE AMENDMENTS
AB 678 (Papan)
As Amended July 3, 2001
Majority vote

ASSEMBLY: 69-2 (May 14, 2001) SENATE: 23-10 (July 20, 2001)

Original Committee Reference: JUD.

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

The Senate amendments delete language providing that, in the above situation, a person may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

AS PASSED BY THE ASSEMBLY, this bill provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Amendments taken in the Senate remove language which provided that a person using the services of an unlicensed contractor may not recover compensation paid if the person knew that the contractor was unlicensed prior to making any payments to the contractor. The Senate deleted this language in order to more strongly encourage contractors to become licensed.

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0002130

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 678

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE : 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 69-2, 5/14/01 - See last page for vote

SUBJECT : Unlicensed contractors

SOURCE : Judge Quentin L. Kopp

DIGEST : This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS : Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

CONTINUED

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or

contract.

This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Comments

Purpose . According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

Background . In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (7/17/01)

Judge Quentin L. Kopp (source)

California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments
American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

ARGUMENTS IN SUPPORT : The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors

be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR

AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg

NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Hearing Date: June 25, 2001 Bill No: AB 678

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
Senator Liz Figueroa, Chair

Bill No: AB 678 Author: Papan
As Amended: May 1, 2001 Fiscal: Yes

SUBJECT: Unlicensed contractors.

SUMMARY: Allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Existing law:

1) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2) Provides that contracting without a license shall be a misdemeanor.

3) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill:

1) Authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

2) Specifies that this authorization is not applicable when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

FISCAL EFFECT: None

COMMENTS:

1. **Purpose.** According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law "in a way which criminal

sanctions and enforcement do not seem to do."

2. **Background.** In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

   Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

3. **Arguments in Support.** The sponsor asserts that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

4. **Requested Amendments.** The Committee has been contacted to raise a concern that this "well-intentioned" bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work. Due to the late timing of this concern, this issue is being discussed with the author and sponsor and should be addressed in committee.

SUPPORT AND OPPOSITION:

Support: Judge Quentin L. Kopp (sponsor)
California Landscape Contractors Association
Construction Industry Legislative Council

Support with Amendments:

American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

Opposition: None on file

Consultant: Robin Hartley

Date of Hearing: April 24, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
AB 678 (Papan) - As Introduced: February 22, 2001

SUBJECT : UNLICENSED CONTRACTORS

KEY ISSUE : SHOULD AN INDIVIDUAL WHO USES THE SERVICES OF AN UNLICENSED CONTRACTOR BE SPECIFICALLY AUTHORIZED TO BRING AN ACTION TO RECOVER FEES ALREADY PAID TO THE UNLICENSED CONTRACTOR EVEN THOUGH THE CONTRACTOR HAS FULLY PERFORMED AND THE INDIVIDUAL MAY KNOW THE CONTRACTOR IS UNLICENSED?

SYNOPSIS

This Measure Allows Individuals Who Use The Services Of An Unlicensed Contractor To Bring An Action To Recover All Compensation Already Paid To The Unlicensed Contractor. According To The Author, The Measure Is Intended To Further Encourage Unlicensed Contractors To Become Licensed, Consistent With Existing Law. However, The Measure Arguably Allows Individuals Who Use Unlicensed Contractors To Be Unjustly Enriched By Permitting Them To Recover Compensation Already Paid Despite The Fact That The Contractor Has Fully Performed And Despite Knowing That The Contractor Is Unlicensed. An Author's Amendment To Address This Concern Is Contained In The Analysis.

SUMMARY : Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

EXISTING LAW :

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total

price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and

7028.)

FISCAL EFFECT : The bill as currently in print is not keyed fiscal.

COMMENTS : This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. In commenting on the need for the measure, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this measure is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of the bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law

respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ?

AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Unjust Enrichment. According to the author, this bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to

the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed and even if they knew the contractor was unlicensed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid. Furthermore, those who knew that the contractor they were employing was unlicensed arguably have "unclean hands," but under this bill they would still be allowed to recover.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In

order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark , supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ?'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

Author's Amendment. Committee staff discussed with the sponsor whether the bill unfairly results in unjustly enriching an individual who uses an unlicensed contractor knowing that the contractor is unlicensed and then sues to recover compensation paid, despite the full performance of the contractor. The sponsor has agreed the bill should be amended to preclude those individuals who use the services of an unlicensed contractor from being able to recover compensation already paid if they knew that the contractor was unlicensed.

The language of this author's amendment is limited to the individual's actual knowledge of whether or not the contractor is licensed, rather than constructive knowledge of that fact. As a result, the concern may be raised that individuals will purposely remain ignorant as to whether or not a contractor they are employing is licensed. The Committee may therefore wish to discuss with the author and the sponsor whether the bill should be amended to also preclude individuals from being able to recover compensation if they "should have known" that the contractor was unlicensed.

REGISTERED SUPPORT / OPPOSITION :

Support

Judge Quentin Kopp (sponsor)

Opposition

None on file

Analysis Prepared by : Saskia Kim / JUD. / (916) 319-2334

ASSEMBLY THIRD READING
AB 678 (Papan)
As Amended May 1, 2001
Majority vote

JUDICIARY	8 -0	BUSINESS & PROFESSIONS	10-0
Ayes:	Steinberg, Bates, Corbett, Dutra, Harman, Longville, Shelley, Wayne	Ayes:	Correa, Bogh, Cedillo, Chavez, Corbett, Kelley, Leach, Cardoza, Nation, Wesson

SUMMARY: Seeks to authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract unless the person knew that the contractor was unlicensed prior to making any payments to the contractor.

EXISTING LAW:

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual.

2) Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor.

FISCAL EFFECT: None

COMMENTS: This bill, sponsored by Judge Quentin Kopp, would specifically allow an individual who had used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract, unless the person knew that the contractor was unlicensed prior to making any payments to the contractor. In commenting on the need for this bill, the author states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, this bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to the Business and Professions Code, Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation

already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

The sponsor further explains the purpose of this bill, stating:

> Section 7031(a) of [the Business and Professions] code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal. 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233. ...
>
> AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed. (Emphasis in original.)

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0000626

Date of Hearing: May 8, 2001

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Lou Correa, Chair
AB 678 (Papan) – As Amended: May 1, 2001

SUBJECT: Unlicensed contractors.

SUMMARY: Authorizes persons who use the services of an unlicensed contractor to bring an action in court to recover all compensation paid to the unlicensed contractor for performance of any act or contract. However, this authorization does not apply when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments are made.

EXISTING LAW

1) Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. (Business and Professions Code section 7031. All further statutory references are to this code.)

2) Requires anyone who contracts to do construction work to be licensed by the Contractors State License Board if the total price of the job is $500 or more and provides that contracting without a license shall be a misdemeanor. (Sections 7048 and 7028.)

FISCAL EFFECT: Unknown. The bill is not keyed fiscal.

COMMENTS:

Purpose of the Bill. The bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor. According to the author, the bill is intended to further encourage unlicensed contractors to become licensed, consistent with existing law.

The bill is sponsored by San Mateo County Superior Court Judge Quentin Kopp. In commenting on the need for the measure, the sponsor states:

> Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

According to the sponsor, the bill is intended to address the recent case of Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, in which the court, in an unpublished portion of the opinion, referred to Section 7031(a) prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor. Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid.

Unjust Enrichment. According to the author, the bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid.

On the other hand, the author argues that the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure that this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. In Hydrotech Systems, Ltd. v. Waterpark, supra., the court stated "Again, the Legislature recently underscored its insistence on a strict application of section 7031 despite the balance of equities. The 1989 amendments make clear that an unlicensed contractor may not recover either 'in law or equity,' and that suit is barred 'regardless of the merits of the cause of action ...'" As a result, the sponsor notes, the measure "is not only consistent with the historical policy of our state but strengthens that policy substantially."

REGISTERED SUPPORT / OPPOSITION:

Support

Judge Quentin Kopp (Sponsor)

Opposition

None on file.

Analysis Prepared by: Jay Greenwood / B. & P. / (916) 319-3301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
NORTHERN BRANCH COURT
1050 MISSION ROAD
SOUTH SAN FRANCISCO, CALIFORNIA 94080

QUENTIN L. KOPP
JUDGE

PHONE (650) 877-5435
FAX (650) 615-0875

July 18, 2000

Louis J. Papan, Esq.
660 El Camino Real
Millbrae, California 94030

Dear Lou:

I enclose a copy of the recent California Court of Appeal decision in Cooper v. Westbrook Torrey Hills, LP.

You will note on page 7295 of the enclosure that the court, in an unpublished portion of the opinion, refers to the state law preventing an unlicensed building contractor from recovering fees but not requiring any refund of fees already paid an unlicensed contractor.

I think California law should be amended to require the refund of fees paid an unlicensed contractor. While I've observed a few criminal actions against unlicensed contractors during my 18 months as a superior court judge, I don't believe those cases receive much in the way of intensive attention. Permitting recovery of fees paid an unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement don't seem to do.

Please advise me of a time at which we may confer.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

Enclosure

We therefore conclude that section 53088.7 prevents a cable television operator from charging a delinquency fee in excess of $4.75, irrespective of whether the cable television operator designates part of that sum a delinquency fee and part a franchise fee. It does not prevent a cable television operator from passing through franchise fees provided that the total fee imposed upon the customer's delinquency does not exceed $4.75.

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Manibog shall recover his costs on appeal.

CROSKEY, J.

We Concur:
KLEIN, P. J.
ALDRICH, J.

CIVIL PROCEDURE

Reasonable expenses necessary to acquire a bond are to be awarded to prevailing party absent contrary evidence in the record.

Cite as 2000 Daily Journal D.A.R. 7293

HARRY G. COOPER,
Plaintiff and Appellant,
v.
WESTBROOK TORREY HILLS, LP,
Defendant and Respondent.

No. D033909
(Super. Ct. No. 707261)
California Court of Appeal
Fourth Appellate District
Division One
Filed July 6, 2000

CERTIFIED FOR PARTIAL PUBLICATION[1]

APPEAL from an order of the Superior Court of San Diego County, Vincent DiFiglia, Judge. Reversed and remanded with directions.

Solomon, Ward, Seidenwurm & Smith, Richard E. McCarthy and Daniel E. Gardenswartz, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Linda D. Fox and Karin Dougan Vogel, for Defendant and Respondent.

Plaintiff Harry G. Cooper appeals from an order denying his motion to recover from defendant Westbrook Torrey Hills, LP, (Westbrook),[2] costs Cooper incurred in making a cash deposit which stayed foreclosure proceedings initiated by Westbrook. Cooper contends the loan costs are recoverable under rule 26(c), California Rules of Court.[3] We agree with Cooper and reverse the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Cooper and Westbrook owned adjacent parcels of land they wished to develop. Toward that end, Cooper, Westbrook and other adjoining landowners entered into a Development Agreement with the City of San Diego (the City) and a separate Agreement Among Developers (AAD) with each other dated June 14, 1989. The agreement with City required Westbrook and Cooper to pay the City the cost of infrastructure improvements that the City would make.[4] In addition, Westbrook, Cooper and other

[1] *Under California Rules of Court, rule 976(b) and 976.1, the introductory paragraph, Factual and Procedural Background, Discussion I and Conclusion are certified for publication.*

[2] Formerly AG Land Associates, LLC, and AGLL Corporation.

[3] All rule references are to the California Rules of Court unless otherwise stated.

[4] The City agreed to provide a fire station, a highway interchange, a sedimentation basin and complete other projects which benefited each of the landowners.

landowners agreed to improve their respective parcels in a number of respects, including for instance altering existing soil levels. The AAD made Westbrook, Cooper and other adjoining landowners financially responsible for the cost of these improvements.

Westbrook supervised and advanced the cost of approximately $1.6 million in improvements to Cooper's property. The improvements were required under the Development Agreement and Cooper secured the amounts advanced by Westbrook with a deed of trust on his land.

However, at no relevant time did Westbrook hold a California contractor's license. After learning that Westbrook did not have a contractor's license, Cooper stopped making payments to Westbrook. In response to Cooper's failure to pay for improvements it had made, Westbrook recorded a notice of default under the deed of trust.

In order to prevent the foreclosure proceeding from moving forward, Cooper filed suit against Westbrook on January 17, 1997, seeking declaratory and injunctive relief. Cooper alleged that as an unlicensed contractor, Westbrook could not recover any compensation for the improvements it had made to Cooper's property. (Bus. & Prof. Code, § 7028, subd. (a).)

On August 21, 1997, the trial court, on stipulated facts, entered judgment for Westbrook and determined that under the circumstances of the case, Westbrook was not required to hold a contractor's license to perform work on Cooper's land.

Westbrook re-noticed the default and foreclosure sale under the Deed of Trust on September 9, 1997. On September 10, 1997, Cooper filed a notice of appeal.

Because its other attempts to stay foreclosure were unsuccessful,[5] Cooper asked the trial court to set an amount for an undertaking. The trial court set an amount of $2.5 million, one and one-half times the amount of the disputed debt.

In order to finance the undertaking, Cooper obtained a $3 million loan and deposited $2.5 million of the loan proceeds with the clerk of the court. Cooper used the remaining loan proceeds to pay interest on the loan.

On November 16, 1998, we reversed the trial court's judgment. (D029421.) We found that Westbrook's improvements to Cooper's property were work which required a contractor's license and that accordingly Cooper was not required to pay for the work. (Bus. & Prof. Code, s7028, subd. (a).)

On remand, Cooper filed a memorandum in which he sought to recover over $200,000 in expenses he had incurred in making his deposit. The trial court determined rule 26(c) does not permit a party to recover the expenses associated with making a cash deposit in lieu of a surety bond. In the alternative the trial court stated that even if it had discretion to award them to Cooper, "I would not in my discretion award Mr. Cooper the costs."

We reverse the trial court's order.

DISCUSSION

I

Rule 26(c)(6) requires that reasonable expenses necessary to acquire a bond are to be awarded to the prevailing party. Code of Civil Procedure[6] section 995.730 explicitly requires that a deposit given in place of a bond must be treated in the same manner as a bond. Thus, contrary to the trial court's ruling, the reasonable expense incurred in making a deposit must be awarded a prevailing party such as Cooper.

In pertinent part, rule 26(c) provides: "The party to whom costs are awarded may recover only the following, when actually incurred: . . . (5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary and (6) other expense reasonably necessary to procure the surety bond, such as the expense of acquiring a letter of credit required as collateral for the bond."

In 1982, the Legislature enacted a specific provision governing deposits in lieu of bonds, section 995.730. Section 995.730 provides: "A deposit given instead of a bond has the *same force and effect*, is treated the same, and is subject to the same conditions, liability, and statutory provisions, including provisions for increase and decrease of amount, as the bond." (§ 995.730, italics added.)

The Judicial Council is empowered to "adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute." (Cal. Const., art. VI, § 6, italics added; *see also* 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § 204, pp. 272-273.) "It is settled that in order to comply with the constitutional requirement of consistency with statutory law, a rule of court must not conflict with the statutory intent." (*Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, 364; *see* also *People* v. *Hall* (1994) 8 Cal.4th 950, 960-963; *California Court Reporters Assn.* v. *Judicial Council of California* (1995) 39 Cal.App.4th 15, 25-26; cf. *Cox* v. *Superior Court* (1993) 19 Cal.App.4th 1046, 1050-1051 [applying a similar provision of Gov. Code, § 68070 authorizing courts to make local rules "'not inconsistent with law'"].) If a court cannot construe a rule of court to be consistent with a statute, the rule is invalid. (*Maldonado* v. *Superior* Court (1984) 162 Cal.App.3d 1259, 1265.) The hierarchy is well established: "the rules promulgated by the Judicial Council are subordinate to statutes." (*Id.* at p. 1265.)

In order to read rule 26(c) consistent with section 995.730, the reasonable or necessary costs associated with procuring a deposit in lieu of a bond must be awarded to a prevailing party.[7] Nevertheless, Westbrook maintains that rule 26(c) only permits recovery of the costs specified by the rule. In making this argument, Westbrook relies on three cases which, in light of later statutory and rule changes, are no longer controlling.

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[5] Cooper requested that Westbrook voluntarily stay its non-judicial foreclosure pending the appeal in a letter dated September 23, 1997. Westbrook rejected this request.

Cooper filed a petition for writ of supersedeas with this court requesting a stay of the foreclosure. The writ was denied. Cooper then offered Westbrook an irrevocable letter of credit for the entire amount claimed, plus interest, in exchange for Westbrook's agreement to forego foreclosure pending appeal. Westbrook rejected Cooper's proposal and continued with the foreclosure proceeding. Cooper went so far as to offer to pay the full amount of the claimed debt pending appeal if Westbrook would agree not to argue that payment would render the appeal moot. Westbrook declined this proposal as well.

[6] Unless otherwise noted, all statutory references are to the California Code of Civil Procedure.

[7] Other jurisdictions have considered this issue and have reached similar conclusions. Costs of collateral are recoverable even though the security was not labeled a "bond." In *Trans World Airlines, Inc.* v. *Hughes* (2d Cir. 1975) 515 F.2d 173, *cert.* denied (1976) 424 U.S. 934, the Second Circuit awarded the prevailing defendant the reasonable costs of a letter of credit, as well as the cost of required quarterly audits of the defendant company's net worth, both of which were provided "in lieu of providing a supersedes bond." (*Id.* at p. 177.)

First, Westbrook relies on *Sequoia Vacuum Systems* v. *Stransky* (1964) 229 Cal.App.2d 281. In *Sequoia*, the court held rule 26(c) only allows recovery of a premium on a surety bond and therefore refused to award the expenses associated with a deposit in lieu of a bond because it was not a specifically enumerated cost. (*Id.* at p. 289.) Westbrook also relies on *Golf West of Kentucky, Inc.* v. *Life Investors, Inc.* (1986) 178 Cal.App.3d 313, in which the court held rule 26(c) prohibited recovery of costs to collateralize a surety bond because such costs were not specifically enumerated. (*Id.* at pp. 316-317.)

Finally, Westbrook relies on *Geldermann, Inc.* v. *Bruner* (1992) 10 Cal.App.4th 640, where the court also refused to award costs incurred in the process of securing a letter of credit in order to collateralize a surety bond because this cost was not specifically listed in rule 26(c). (*Id.* at p. 644.) In reaching this conclusion, the *Geldermann* court put the Legislature on notice that rule 26(c) led to inequitable results. The court stated rule 26(c) "ignores the commercial realities of today which may require an expenditure for a letter of credit to serve as security," and further noted that "[f]airness in this case would compel [plaintiff] to reimburse [defendant] for the cost of the letter of credit." (*Id.* at p. 644.) The court further advised the defendant to make his argument to the Judicial Council, the body charged with amending and adopting California Rules of Court. (*Ibid.*)

The Judicial Council responded directly to the *Geldermann* court's concern by adding, as of January 1, 1994, subpart 6 to rule 26(c) and expressly permitting recovery of any "other expense" needed to obtain a bond, including the cost of obtaining a letter of credit. (Rule 26(c)(6); see also 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 819, p. 845.)

Westbrook argues that the amendment to the rule is a strict one directed solely at the situations present in *Geldermann* and *Golf West*, that is, costs associated with obtaining a surety bond. However, as Cooper points out, under section 995.730 we are required to treat a bond and a deposit in lieu of a bond as equivalents. Because under rule 26(c)(6) the cost of obtaining a bond is recoverable, the cost of making a cash deposit is also recoverable. Thus, contrary to the trial court's finding, Cooper was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

[This Part Is Not Certified for Publication]

II

As we have noted, in addition to determining Cooper's expenses were not recoverable under rule 26(c), in the alternative the trial court found that if it had the power to award costs it would not do so. Although we agree that our review of this alternative aspect of the trial court's ruling is limited to determining whether there has been an abuse of discretion (Citizens for Responsible Development v. City of West Hollywood (1995) 39 Cal.App.4th 490, 506), on this record we agree with Cooper that such an abuse occurred.

In moving to tax Cooper's costs, Westbrook argued that his interest expenses were unnecessary because Cooper could have paid the amounts due under the AAD "under protest" and recovered them from Westbrook following his successful appeal. However, Cooper did offer to pay Westbrook the amount due so long as Westbrook agreed to repay the money in the event Cooper was successful on appeal. Westbrook refused Cooper's offer. As Cooper points out, such an agreement was probably necessary because although the law prevents an unlicensed contractor from recovering fees, it does not require any refund of fees paid to an unlicensed contractor. (See ~~Culberson v. Cieck (1964) 225 Cal.App.2d 451, 473.~~) Thus on this record there was no basis upon which the trial court could find that the expense of either a bond or a deposit was avoidable by way of voluntary payment of the underlying obligation.

Westbrook further argued the method Cooper chose in staying the foreclosure was more costly than obtaining a surety bond. However this argument was not an adequate basis upon which to deny costs altogether.

Finally, Westbrook argued that allowing Cooper to recover his loan costs was grossly unfair in light of the $1.6 million windfall Cooper received by virtue of our judgment. In some respects, we are sympathetic to this argument. Having provided Cooper with such a large uncompensated benefit, it is somewhat harsh to require that Westbrook provide Cooper with any further compensation. However, the trial court's power to deny or reduce costs under rule 26(c) is limited to costs which are either unnecessary or unreasonable. (See Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131-132 [interpreting similar provisions of Code Civ. Proc., § 1032].) The trial court has no general power to reduce costs, otherwise proper, on the basis that it would impose an undue burden on a party. Rather, that is a power which is reserved to a reviewing court in making an award of costs under rule 26(a). (Ramirez v. St. Paul Fire & Marine Ins. Co. (1995) 35 Cal.App.4th 473, 478.) "Only the reviewing court is empowered to depart from the usual rule for awarding costs when 'the interests of justice require it,' as by directing the parties to bear their own costs, by awarding costs to other than the nominal prevailing party, or by apportioning costs among the parties. [Citations.]"[8] (Ibid.)

[End of Part Not Certified for Publication]

CONCLUSION

Because there was no basis in the record upon which the trial court could properly deny Cooper's request for the interest costs he incurred in making the deposit needed to stay foreclosure pending his prior appeal, the trial court's order must be reversed. On remand the trial court is directed to award Cooper such interest expenses as it finds were reasonable and necessary.

Order reversed; Cooper to recover his costs of appeal.

BENKE, J.

We concur:
WORK, Acting P.J.
McINTYRE, J.

[8] *Because our remittitur in the prior appeal has issued, the only means by which our award of costs may be altered is by way of an application to recall the remittitur. (Ramirez v. St. Paul Fire & Marine Ins. Co., supra, 35 Cal.App.4th at p. 478; rule 25(d).) No such application has been made.*

MODIFICATION
CRIMINAL LAW AND PROCEDURE

Officer's attempt to obtain consent to search does not require Miranda warning, whether or not defendant is in custody.

Cite as 2000 Daily Journal D.A.R. 7296

THE PEOPLE,
Plaintiff and Respondent,
v.
NOLAN BREWER,
Defendant and Appellant.

No. B132056
(Super. Ct. No. SA030961)
California Court of Appeal
Second Appellate District
Division Five
Filed July 5, 2000

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on June 8, 2000, and certified for publication be modified in the following particulars:

On page 12[1], third sentence of the second full paragraph, beginning "In reaching this conclusion" is deleted and the following sentence is inserted in its place

> In reaching this conclusion, the court in Whitfield relied on the holding of the United States Supreme Court in Oregon v. Elstad (1985) 470 U.S. 298, 308 [the fruit of the poisonous tree concept does not apply to require suppression when the alleged fruit is a subsequent statement voluntarily given by a suspect since a mere failure to admonish a suspect does not render the initial statement coerced although the initial statement is inadmissible because it is a violation of Miranda], and Michigan v. Tucker (1974) 417 U.S. 433, 446 [the fruit of the poisonous tree concept does not apply to "fruits" of a statement taken in contravention of Miranda where the alleged violation is a failure to admonish].

In the sentence quoted above, after the words "violation of Miranda]," add as footnote 8 the following footnote, which will require renumbering of all subsequent footnotes:

> [8] In Dickerson v. United States (2000) ___ U.S. ___ [2000 Daily Journal D.A.R. 6789], the Supreme Court made clear that Miranda warnings are constitutionally based, and also reaffirmed the validity of the ruling in Elstad that the fruit of the poisonous tree doctrine developed in Fourth Amendment cases does not apply in cases involving non-coercive violations of Miranda because "unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment." (Id. at p. ___ [2000 Daily Journal D.A.R. at p. 6792].)

On page 14[2], first sentence of the first full paragraph, before the word "violation," the word "technical" is deleted so that the sentence reads:

> We will examine the record to determine if the trial court was correct in its determination that defendant's statements were not coerced even though there was a violation of Miranda due to a failure to admonish defendant about his rights.

There is no change in judgment.

* WEISMAN, J.* TURNER, P.J ARMSTRONG, J.

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

[1] See Daily Appellate Report of June 12, 2000, page 6086, column 2, lines 13-29, first full paragraph.

[2] See Daily Appellate Report of June 12, 2000, page 6087, column 1, line 4, second full paragraph.

cc: Hon. Louis J. Papan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 21, 2001

MAR 2001

LJP NL GH JM HP
BG MS BY

Members of the Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: Assembly Bill No. 678

Dear Ladies and Gentlemen:

As the sponsor of Assembly Bill No. 678, I thank you for consideration of it.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know from the bill's content, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm
cc: Honorable Louis J. Papan

Rm. 3173

APR 20 2001

LIVINGSTON & MATTESICH

LJP ___NL ___GH ___JM ___HP ___
BG ___MS ___BY ___

April 20, 2001

PARKE TERRY
LEGISLATIVE ADVOCATE

Honorable Darrell Steinberg, Chair
Assembly Judiciary Committee
Room 5136 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814 -3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3013

RE: AB 678 (Papan) – Support from CA Landscape Contractors Association
Assembly Judiciary Committee
Hearing Date: April 24, 2001

Dear Assembly Member Steinberg:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: Assembly Member Lou Papan
Mr. Drew Liebert, Chief Consultant
Mr. Mark Redmond, Assembly Republican Caucus
California Landscape Contractors Association

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

MAR 2[illegible] 2001

March 23, 2001

Honorable Louis J. Papan
Assemblyman, Nineteenth District
California Legislature
State Capitol
P.O. Box 94249
Sacramento, CA 94249-0019

LJP | NL GH JM HP
BG MS BY

Re: Assembly Bill No. 678

Dear Lou:

As the sponsor of Assembly Bill No. 678, I thank you for its introduction.

Our state's policy since 1939 reflects in Section 7031 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature long ago determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides service and then cannot collect compensation.

As you know, AB No. 678 authorizes a consumer who utilizes an unlicensed contractor to sue to recover any money already paid the unlicensed contractor. It adds such provision to Section 7031(a) of the Business and Professions Code, and obviously is not only consistent with historical policy of our state but strengthens that policy substantially.

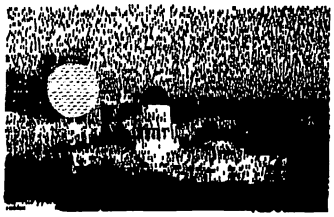
I strongly urge approval of AB No. 678 which was inspired by the California Court of Appeal's recent reference to lack of such an authorization or enabling provision in California law.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

678



Construction Industry Legislative Council

MEMBERS

American Subcontractors Association / California:
Bay Area Chapter
Capital City Chapter
Inland Empire Chapter
Los Angeles/Orange Co. Chapter
Redwood Empire Chapter
San Diego Chapter

Builders Exchanges Service Center

California Conference of Mason Contractor Associations, Inc.:
Fresno Chapter
Los Angeles County Chapter
Monterey-Santa Cruz Chapter
North Bay Chapter
Orange County Chapter
Sacramento Chapter
Saddleback Valley Chapter
San Bernardino Chapter
San Diego Chapter
San Francisco Chapter
Santa Barbara-Ventura Chapter
South Bay Chapter

California Landscape Contractors Association

California Building Material Dealers Association

Floor Covering Association/ Central Coast Counties

Insulation Contractors Association

Institute of Heating and Air Conditioning Industries Inc.

Painting & Decorating Contractors of California:
East Bay Counties PDCA
Los Angeles County PDCA
Tri-County Chapter PDCA

Plumbing, Heating & Cooling Contractors of California

Santa Barbara Contractors Association

Woodwork Institute of California

CILC ADVOCATE
Skip Daum

JUN 21 2001

LJP NL GH JM HP
BG MS BY

DATE: June 21, 2001

TO: Senate Business & Professions Committee

FR: Skip Daum, Advocate SD

Re: **AB 678 (Papan) ..... SUPPORT**

This bill would authorize a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract.

It is a direct method of clamping down on underground contractor activity.

cc Papan

Opp Wanlot

Rm. 3173 6/18

LIVINGSTON & MATTESICH

LJP __NL __GH __JM __HP __
BG __MS __BY __

PARKE D. TERRY
LEGISLATIVE ADVOCATE

JUN 25 2001

June 20, 2001

Honorable Liz Figueroa, Chair
Senate Business & Professions Committee
Room 2057 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3013

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Senate Business & Professions Committee
Hearing Date: June 25, 2001

Dear Senator Figueroa:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement unless the owner knew the individual was unlicensed.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have unknowingly engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: Assemblymember Lou Papan
Bill Gage, Chief Consultant
Richard Paul, Consultant

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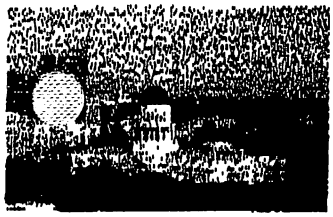

Construction Industry Legislative Council

MEMBERS

American Subcontractors Association / California:
Bay Area Chapter
Capital City Chapter
Inland Empire Chapter
Los Angeles/Orange Co. Chapter
Redwood Empire Chapter
San Diego Chapter

Builders Exchanges Service Center

California Conference of Mason Contractor Associations, Inc.:
Fresno Chapter
Los Angeles County Chapter
Monterey-Santa Cruz Chapter
North Bay Chapter
Orange County Chapter
Sacramento Chapter
Saddleback Valley Chapter
San Bernardino Chapter
San Diego Chapter
San Francisco Chapter
Santa Barbara-Ventura Chapter
South Bay Chapter

California Landscape Contractors Association

California Building Material Dealers Association

Floor Covering Association/ Central Coast Counties

Insulation Contractors Association

Institute of Heating and Air Conditioning Industries Inc.

Painting & Decorating Contractors of California:
East Bay Counties PDCA
Los Angeles County PDCA
Tri-County Chapter PDCA

Plumbing, Heating & Cooling Contractors of California

Santa Barbara Contractors Association

Woodwork Institute of California

CILC ADVOCATE
Skip Daum

JUN 21 2001

DATE: June 21, 2001

LJP NL GH JM HP
BG MS BY

TO: Senate Business & Professions Committee

FR: Skip Daum, Advocate SD

Re: **AB 678 (Papan) ..... SUPPORT**

This bill would authorize a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract.

It is a direct method of clamping down on underground contractor activity.

cc Papan

1401 P STREET #113 SACRAMENTO CALIFORNIA 95814

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER
REDWOOD CITY, CALIFORNIA 94063-1655

QUENTIN L. KOPP
JUDGE

(650) 363-4817
FAX (650) 363-4698
E-mail: qkopp@co.sanmateo.ca.us

March 13, 2001

MAR 15 2001

LJP NL GH JM HP
BG MS BY

Honorable Louis J. Papan
Room 3173
State Capitol
Sacramento, 95814

Re: Assembly Bill No. 678

Dear Lou:

Thank you for introducing Assembly Bill No. 678 which expressly authorizes a person receiving services of an unlicensed contractor to sue to recover all compensation paid to the unlicensed contractor. The bill thusly amends Section 7031 of the Business and Professions Code.

Section 7031(a) of that code requires any contractor suing for money due on a construction contract to allege that he or she was a duly licensed contractor at all times during performance of the work or contract. In AB No. 678, the question has been raised as to whether a person for whom work was performed by an unlicensed contractor would be entitled to recover compensation paid the unlicensed contractor if the person receiving the services knew the contractor was unlicensed. By a parity of reasoning from the state of the law respecting Section 7031(a), knowledge of the status of an unlicensed contractor is irrelevant to the recovery of compensation from the unlicensed contractor. California courts have unmistakably ruled that in any action by an unlicensed contractor to recover for the value of a contractor's services rendered or contractual provision, the unlicensed contractor cannot recover money even if the person for whom the work was performed knew the contractor was unlicensed. Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal 3d 988, 997-998; Vallejo Development Co. v. Beck Development Co., Inc. (1994) 24 Cal. App. 4th 929, 941; see also Pickens v. American Mortgage Exchange (1969) 269 Cal. App. 2d 299, 302 and Cash v. Blackett (1948) 87 Cal. App. 2d 233.

Section 7031 of the Business and Professions Code reflects the intent of the Legislature that the public be protected from unqualified contractors. The licensing requirements provide minimal assurance that all persons furnishing building and construction services in California possess the requisite skill and character, understand pertinent local laws and codes, and know the

rudiments of administering a contracting business. The obvious intent of Section 7031 is to discourage persons who have not complied with the licensing requirements from offering or providing their unlicensed services for compensation. Section 7031 controls, despite any perceived injustice to the unlicensed contractor. It represents a legislative finding that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness to an unlicensed party. AB No. 678 constitutes an additional and consistent legislative determination that such deterrence can best be realized by compelling violators to return all compensation received from providing their unlicensed services. That rationale is reflected in the judicial decisions involving rejected attempts by unlicensed contractors to obtain payment based on knowledge of their unlicensed status by persons sued for non-payment of services rendered. That policy is furthered in AB No. 678 by specifically recognizing the capacity of an owner to recover money already paid an unlicensed contractor, even if the person knew the contractor was unlicensed.

The legislative intent set forth above should be manifested in a committee analysis of the bill, as well as by a published letter to the Assembly Journal of Proceedings.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

Construction Industry Legislative Council

MEMBERS

American Subcontractors Association / California:
Bay Area Chapter
Capital City Chapter
Inland Empire Chapter
Los Angeles/Orange Co. Chapter
Redwood Empire Chapter
San Diego Chapter

Builders Exchanges Service Center

California Conference of Mason Contractor Associations, Inc.:
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San Diego Chapter
San Francisco Chapter
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East Bay Counties PDCA
Los Angeles County PDCA
Tri-County Chapter PDCA

Plumbing, Heating & Cooling Contractors of California

Santa Barbara Contractors Association

Woodwork Institute of California

CILC ADVOCATE
Skip Daum

APR 23 2001

DATE: April 21, 2001

TTO: Assembly Judiciary Committee

LJP ___ NL ___ GH ___ JM ___ HP ___
BG ___ MS ___ BY ___

FR: Skip Daum, Advocate

Re: **AB 678 (Papan) ..... SUPPORT**

This bill would authorize a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract.

It is a direct method of clamping down on underground contractor activity.

1401 P STREET, #412 SACRAMENTO, CALIFORNIA 95814
PHONE: (916) 658-0250 FAX: (916) 658-0252

Rm. 3173

LIVINGSTON & MATTESICH

LJP NL GH JM HP
BG MS BY

PARKE D. TERRY
LEGISLATIVE ADVOCATE

2001

May 3, 2001

Honorable John Campbell, Vice Chair
Assembly Business & Professions Committee
Room 2174 State Capitol
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: PTERRY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3013

RE: AB 678 (Papan) – Support from California Landscape Contractors Association
Assembly Business & Professions Committee
Hearing Date: May 8, 2001

Dear Assembly Member Campbell:

Our client, the California Landscape Contractors Association, respectfully urges your "Aye" vote on AB 678, a measure that would authorize homeowners and other persons to bring an action to recover all compensation paid to an unlicensed individual in connection with a work of improvement.

Unlicensed contracting activity remains a major concern of CLCA's 2500 members. Licensed contractors are required to "play by the rules" which includes demonstrating knowledge of contracting laws and regulations, passing an examination in the skill or trade covered by the license, maintaining a surety bond, paying workers' compensation premiums on behalf of employees, complying with labor laws relating to wages, hours, and record-keeping, and withholding of other employee taxes as required by state and federal law.

Actions may be brought against licensed contractors for their alleged failure to perform work or for performance of work in a substandard manner. The same right ought to be extended to consumers who have engaged an unlicensed individual. For these reasons we ask that you take favorable action on AB 678.

Sincerely,

PARKE D. TERRY

cc: The Honorable Lou Papan
Mr. Jay Greenwood, Chief Consultant
Assembly Republican Caucus
California Landscape Contractors Association

Copy to Glenda 5/4/01

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July 18, 2000

Louis J. Papan, Esq.
660 El Camino Real
Millbrae, California 94030

Dear Lou:

I enclose a copy of the recent California Court of Appeal decision in Cooper v. Westbrook Torrey Hills, LP.

You will note on page 7295 of the enclosure that the court, in an unpublished portion of the opinion, refers to the state law preventing an unlicensed building contractor from recovering fees but not requiring any refund of fees already paid an unlicensed contractor.

I think California law should be amended to require the refund of fees paid an unlicensed contractor. While I've observed a few criminal actions against unlicensed contractors during my 18 months as a superior court judge, I don't believe those cases receive much in the way of intensive attention. Permitting recovery of fees paid an unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement don't seem to do.

Please advise me of a time at which we may confer.

Sincerely yours,

QUENTIN L. KOPP

QLK:dtm

Enclosure

We therefore conclude that section 53088.7 prevents a cable television operator from charging a delinquency fee in excess of $4.75, irrespective of whether the cable television operator designates part of that sum a delinquency fee and part a franchise fee. It does not prevent a cable television operator from passing through franchise fees provided that the total fee imposed upon the customer's delinquency does not exceed $4.75.

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Manibog shall recover his costs on appeal.

CROSKEY, J.

We Concur:
KLEIN, P. J.
ALDRICH, J.

CIVIL PROCEDURE

Reasonable expenses necessary to acquire a bond are to be awarded to prevailing party absent contrary evidence in the record.

Cite as 2000 Daily Journal D.A.R. 7293

HARRY G. COOPER,
Plaintiff and Appellant,
v.
WESTBROOK TORREY HILLS, LP,
Defendant and Respondent.

No. D033909
(Super. Ct. No. 707261)
California Court of Appeal
Fourth Appellate District
Division One
Filed July 6, 2000

CERTIFIED FOR PARTIAL PUBLICATION[1]

APPEAL from an order of the Superior Court of San Diego County, Vincent DiFiglia, Judge. Reversed and remanded with directions.

Solomon, Ward, Seidenwurm & Smith, Richard E. McCarthy and Daniel E. Gardenswartz, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Linda D. Fox and Karin Dougan Vogel, for Defendant and Respondent.

Plaintiff Harry G. Cooper appeals from an order denying his motion to recover from defendant Westbrook Torrey Hills, LP, (Westbrook),[2] costs Cooper incurred in making a cash deposit which stayed foreclosure proceedings initiated by Westbrook. Cooper contends the loan costs are recoverable under rule 26(c), California Rules of Court.[3] We agree with Cooper and reverse the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Cooper and Westbrook owned adjacent parcels of land they wished to develop. Toward that end, Cooper, Westbrook and other adjoining landowners entered into a Development Agreement with the City of San Diego (the City) and a separate Agreement Among Developers (AAD) with each other dated June 14, 1989. The agreement with City required Westbrook and Cooper to pay the City the cost of infrastructure improvements that the City would make.[4] In addition, Westbrook, Cooper and other

[1] *Under California Rules of Court, rule 976(b) and 976.1, the introductory paragraph, Factual and Procedural Background, Discussion I and Conclusion are certified for publication.*

[2] Formerly AG Land Associates, LLC, and AGLL Corporation.

[3] All rule references are to the California Rules of Court unless otherwise stated.

[4] The City agreed to provide a fire station, a highway interchange, a detention basin and complete other projects which benefited each of the landowners.

First, Westbrook relies on *Sequoia Vacuum Systems* v. *Stransky* (1964) 229 Cal.App.2d 281. In *Sequoia*, the court held rule 26(c) only allows recovery of a premium on a surety bond and therefore refused to award the expenses associated with a deposit in lieu of a bond because it was not a specifically enumerated cost. (*Id.* at p. 289.) Westbrook also relies on *Golf West of Kentucky, Inc.* v. *Life Investors, Inc.* (1986) 178 Cal.App.3d 313, in which the court held rule 26(c) prohibited recovery of costs to collateralize a surety bond because such costs were not specifically enumerated. (*Id.* at pp. 316-317.)

Finally, Westbrook relies on *Geldermann, Inc.* v. *Bruner* (1992) 10 Cal.App.4th 640, where the court also refused to award costs incurred in the process of securing a letter of credit in order to collateralize a surety bond because this cost was not specifically listed in rule 26(c). (*Id.* at p. 644.) In reaching this conclusion, the *Geldermann* court put the Legislature on notice that rule 26(c) led to inequitable results. The court stated rule 26(c) "ignores the commercial realities of today which may require an expenditure for a letter of credit to serve as security," and further noted that "[f]airness in this case would compel [plaintiff] to reimburse [defendant] for the cost of the letter of credit." (*Id.* at p. 644.) The court further advised the defendant to make his argument to the Judicial Council, the body charged with amending and adopting California Rules of Court. (*Ibid.*)

The Judicial Council responded directly to the *Geldermann* court's concern by adding, as of January 1, 1994, subpart 6 to rule 26(c) and expressly permitting recovery of any "other expense" needed to obtain a bond, including the cost of obtaining a letter of credit. (Rule 26(c)(6); see also 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 819, p. 845.)

Westbrook argues that the amendment to the rule is a strict one directed solely at the situations present in *Geldermann* and *Golf West*, that is, costs associated with obtaining a surety bond. However, as Cooper points out, under section 995.730 we are required to treat a bond and a deposit in lieu of a bond as equivalents. Because under rule 26(c)(6) the cost of obtaining a bond is recoverable, the cost of making a cash deposit is also recoverable. Thus, contrary to the trial court's finding, Cooper was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

[This Part Is Not Certified for Publication]

II

As we have noted, in addition to determining Cooper's expenses were not recoverable under rule 26(c), in the alternative the trial court found that if it had the power to award costs it would not do so. Although we agree that our review of this alternative aspect of the trial court's ruling is limited to determining whether there has been an abuse of discretion (Citizens for Responsible Development v. City of West Hollywood (1995) 39 Cal.App.4th 490, 506), on this record we agree with Cooper that such an abuse occurred.

In moving to tax Cooper's costs, Westbrook argued that his interest expenses were unnecessary because Cooper could have paid the amounts due under the AAD "under protest" and recovered them from Westbrook following his successful appeal. However, Cooper did offer to pay Westbrook the amount due so long as Westbrook agreed to repay the money in the event Cooper was successful on appeal. Westbrook refused Cooper's offer. As Cooper points out, such an agreement was probably necessary because although the law prevents an unlicensed contractor from recovering fees, it does not require any refund of fees paid to an unlicensed contractor. (See Culbertson v. Cicek (1964) 225 Cal.App.2d 451, 493.) Thus on this record there was no basis upon which the trial court could find that the expense of either a bond or a deposit was avoidable by way of voluntary payment of the underlying obligation.

Westbrook further argued the method Cooper chose in staying the foreclosure was more costly than obtaining a surety bond. However this argument was not an adequate basis upon which to deny costs altogether.

Finally, Westbrook argued that allowing Cooper to recover his loan costs was grossly unfair in light of the $1.6 million windfall Cooper received by virtue of our judgment. In some respects, we are sympathetic to this argument. Having provided Cooper with such a large uncompensated benefit, it is somewhat harsh to require that Westbrook provide Cooper with any further compensation. However, the trial court's power to deny or reduce costs under rule 26(c) is limited to costs which are either unnecessary or unreasonable. (See Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131-132 [interpreting similar provisions of Code Civ. Proc., § 1032].) The trial court has no general power to reduce costs, otherwise proper, on the basis that it would impose an undue burden on a party. Rather, that is a power which is reserved to a reviewing court in making an award of costs under rule 26(a). (Ramirez v. St. Paul Fire & Marine Ins. Co. (1995) 35 Cal.App.4th 473, 478.) "Only the reviewing court is empowered to depart from the usual rule for awarding costs when 'the interests of justice require it,' as by directing the parties to bear their own costs, by awarding costs to other than the nominal prevailing party, or by apportioning costs among the parties. [Citations.]"[8] (Ibid.)

[End of Part Not Certified for Publication]

CONCLUSION

Because there was no basis in the record upon which the trial court could properly deny Cooper's request for the interest costs he incurred in making the deposit needed to stay foreclosure pending his prior appeal, the trial court's order must be reversed. On remand the trial court is directed to award Cooper such interest expenses as it finds were reasonable and necessary.

Order reversed; Cooper to recover his costs of appeal.

BENKE, J.

We concur:
WORK, Acting P.J.
McINTYRE, J.

[8] *Because our remittitur in the prior appeal has issued, the only means by which our award of costs may be altered is by way of an application to recall the remittitur. (Ramirez v. St. Paul Fire & Marine Ins. Co., supra, 35 Cal.App.4th at p. 478; rule 25(d).) No such application has been made.*

JUL-31-2000 17:20 P.09/10

landowners agreed to improve their respective parcels in a number of respects, including for instance altering existing soil levels. The AAD made Westbrook, Cooper and other adjoining landowners financially responsible for the cost of these improvements.

Westbrook supervised and advanced the cost of approximately $1.6 million in improvements to Cooper's property. The improvements were required under the Development Agreement and Cooper secured the amounts advanced by Westbrook with a deed of trust on his land.

However, at no relevant time did Westbrook hold a California contractor's license. After learning that Westbrook did not have a contractor's license, Cooper stopped making payments to Westbrook. In response to Cooper's failure to pay for improvements it had made, Westbrook recorded a notice of default under the deed of trust.

In order to prevent the foreclosure proceeding from moving forward, Cooper filed suit against Westbrook on January 17, 1997, seeking declaratory and injunctive relief. Cooper alleged that as an unlicensed contractor, Westbrook could not recover any compensation for the improvements it had made to Cooper's property. (Bus. & Prof. Code, § 7028, subd. (a).)

On August 21, 1997, the trial court, on stipulated facts, entered judgment for Westbrook and determined that under the circumstances of the case, Westbrook was not required to hold a contractor's license to perform work on Cooper's land.

Westbrook re-noticed the default and foreclosure sale under the Deed of Trust on September 9, 1997. On September 10, 1997, Cooper filed a notice of appeal.

Because its other attempts to stay foreclosure were unsuccessful,[5] Cooper asked the trial court to set an amount for an undertaking. The trial court set an amount of $2.5 million, one and one-half times the amount of the disputed debt.

In order to finance the undertaking, Cooper obtained a $3 million loan and deposited $2.5 million of the loan proceeds with the clerk of the court. Cooper used the remaining loan proceeds to pay interest on the loan.

On November 16, 1998, we reversed the trial court's judgment. (D029421.) We found that Westbrook's improvements to Cooper's property were work which required a contractor's license and that accordingly Cooper was not required to pay for the work. (Bus. & Prof. Code, s7028, subd. (a).)

On remand, Cooper filed a memorandum in which he sought to recover over $200,000 in expenses he had incurred in making his deposit. The trial court determined rule 26(c) does not permit a party to recover the expenses associated with making a cash deposit in lieu of a surety bond. In the alternative the trial court stated that even if it had discretion to award them to Cooper, "I would not in my discretion award Mr. Cooper the costs."

We reverse the trial court's order.

DISCUSSION

I

Rule 26(c)(6) requires that reasonable expenses necessary to acquire a bond are to be awarded to the prevailing party. Code of Civil Procedure[6] section 995.730 explicitly requires that a deposit given in place of a bond must be treated in the same manner as a bond. Thus, contrary to the trial court's ruling, the reasonable expense incurred in making a deposit must be awarded a prevailing party such as Cooper.

In pertinent part, rule 26(c) provides: "The party to whom costs are awarded may recover only the following, when actually incurred: . . . (5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary and (6) other expense reasonably necessary to procure the surety bond, such as the expense of acquiring a letter of credit required as collateral for the bond."

In 1982, the Legislature enacted a specific provision governing deposits in lieu of bonds, section 995.730. Section 995.730 provides: "A deposit given instead of a bond has the *same force and effect*, is treated the same, and is subject to the same conditions, liability, and statutory provisions, including provisions for increase and decrease of amount, as the bond." (§ 995.730, italics added.)

The Judicial Council is empowered to "adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute." (Cal. Const., art. VI, § 6, italics added; *see also* 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § 204, pp. 272-273.) "It is settled that in order to comply with the constitutional requirement of consistency with statutory law, a rule of court must not conflict with the statutory intent." (*Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, 364; *see* also *People* v. *Hall* (1994) 8 Cal.4th 950, 960-963; *California Court Reporters Assn.* v. *Judicial Council of California* (1995) 39 Cal.App.4th 15, 25-26; cf. *Cox* v. *Superior Court* (1993) 19 Cal.App.4th 1046, 1050-1051 [applying a similar provision of Gov. Code, § 68070 authorizing courts to make local rules "'not inconsistent with law'"].) If a court cannot construe a rule of court to be consistent with a statute, the rule is invalid. (*Maldonado* v. *Superior* Court (1984) 162 Cal.App.3d 1259, 1265.) The hierarchy is well established: "the rules promulgated by the Judicial Council are subordinate to statutes." (*Id.* at p. 1265.)

In order to read rule 26(c) consistent with section 995.730, the reasonable or necessary costs associated with procuring a deposit in lieu of a bond must be awarded to a prevailing party.[7] Nevertheless, Westbrook maintains that rule 26(c) only permits recovery of the costs specified by the rule. In making this argument, Westbrook relies on three cases which, in light of later statutory and rule changes, are no longer controlling.

---

[5] Cooper requested that Westbrook voluntarily stay its non-judicial foreclosure pending the appeal in a letter dated September 23, 1997. Westbrook rejected this request.

Cooper filed a petition for writ of supersedeas with this court requesting a stay of the foreclosure. The writ was denied. Cooper then offered Westbrook an irrevocable letter of credit for the entire amount claimed, plus interest, in exchange for Westbrook's agreement to forego foreclosure pending appeal. Westbrook rejected Cooper's proposal and continued with the foreclosure proceeding. Cooper went so far as to offer to pay the full amount of the claimed debt pending appeal if Westbrook would agree not to argue that payment would render the appeal moot. Westbrook declined this proposal as well.

[6] Unless otherwise noted, all statutory references are to the California Code of Civil Procedure.

[7] Other jurisdictions have considered this issue and have reached similar conclusions. Costs of collateral are recoverable even though the security was not labeled a "bond." In *Trans World Airlines, Inc.* v. *Hughes* (2d Cir. 1975) 515 F.2d 173, *cert.* denied (1976) 424 U.S. 934, the Second Circuit awarded the prevailing defendant the reasonable costs of a letter of credit, as well as the cost of required quarterly audits of the defendant company's net worth, both of which were provided "in lieu of providing a supersedes bond." (*Id.* at p. 177.)

0937

MODIFICATION
CRIMINAL LAW AND PROCEDURE

Officer's attempt to obtain consent to search does not require Miranda warning, whether or not defendant is in custody.

Cite as 2000 Daily Journal D.A.R. 7296

THE PEOPLE,
Plaintiff and Respondent,
v.
NOLAN BREWER,
Defendant and Appellant.

No. B132056
(Super. Ct. No. SA030961)
California Court of Appeal
Second Appellate District
Division Five
Filed July 5, 2000

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on June 8, 2000, and certified for publication be modified in the following particulars:

On page 12[1], third sentence of the second full paragraph, beginning "In reaching this conclusion" is deleted and the following sentence is inserted in its place

> In reaching this conclusion, the court in Whitfield relied on the holding of the United States Supreme Court in Oregon v. Elstad (1985) 470 U.S. 298, 308 [the fruit of the poisonous tree concept does not apply to require suppression when the alleged fruit is a subsequent statement voluntarily given by a suspect since a mere failure to admonish a suspect does not render the initial statement coerced although the initial statement is inadmissible because it is a violation of Miranda], and Michigan v. Tucker (1974) 417 U.S. 433, 446 [the fruit of the poisonous tree concept does not apply to "fruits" of a statement taken in contravention of Miranda where the alleged violation is a failure to admonish].

In the sentence quoted above, after the words "violation of Miranda]," add as footnote 8 the following footnote, which will require renumbering of all subsequent footnotes:

> [8] In Dickerson v. United States (2000) ___ U.S. ___ [2000 Daily Journal D.A.R. 6789], the Supreme Court made clear that Miranda warnings are constitutionally based, and also reaffirmed the validity of the ruling in Elstad that the fruit of the poisonous tree doctrine developed in Fourth Amendment cases does not apply in cases involving non-coercive violations of Miranda because "unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment." (Id. at p. ___ [2000 Daily Journal D.A.R. at p. 6792].)

On page 14[2], first sentence of the first full paragraph, before the word "violation," the word "technical" is deleted so that the sentence reads:

> We will examine the record to determine if the trial court was correct in its determination that defendant's statements were not coerced even though there was a violation of Miranda due to a failure to admonish defendant about his rights.

There is no change in judgment.

* WEISMAN, J.* TURNER, P.J ARMSTRONG, J.

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

[1] See Daily Appellate Report of June 12, 2000, page 6086, column 2, lines 13-29, first full paragraph.

[2] See Daily Appellate Report of June 12, 2000, page 6087, column 1, line 4, second full paragraph.

BACKGROUND
AB 678 Contractors

Source: Judge Quentin Kopp (650) 363-4817
Staff: Glenda Hubner 319-2019

No known similar bills before either this session or a recent previous session of legislature.

No known interim hearings on the subject matter of the bill.

Witnesses: Judge Quentin Kopp

Explanation of the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolved the problem:
Our state's policy since 1939 reflects in Section 7131 of the Business and Professions Code the intent of the Legislature that the public be protected from unqualified contractors. Since 1939, a contractor must be licensed by the state in order to recover the value of services rendered with or without a written contract. Licensing requirements provide minimal assurance that all persons furnishing construction services in our state possess the requisite skill and character, understand pertinent local laws and codes, and know the rudiments of administering a contracting business. The Legislature had determined that the importance of deterring unlicensed persons from engaging in the building or contracting business outweighs any harshness to an unlicensed party who provides services and then cannot collect compensation.

Existing law prohibits any unlicensed contractor from bringing or maintaining an action to recover compensation in any court in this state. Currently 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

This bill would clarify that 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.

Permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.

Please see attached letter for further explanation.

*81 Cal. App. 4th 1294, *; 2000 Cal. App. LEXIS 528, **;*
*97 Cal. Rptr. 2d 742, ***; 2000 Cal. Daily Op. Service 5493*

HARRY G. **COOPER,** Plaintiff and Appellant, v. **WESTBROOK TORREY HILLS,** LP, Defendant and Respondent.

COOPER v. WESTBROOK TORREY HILLS

D033909

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE

81 Cal. App. 4th 1294; 2000 Cal. App. LEXIS 528; 97 Cal. Rptr. 2d 742; 2000 Cal. Daily Op. Service 5493; 2000 Daily Journal DAR 7293

July 6, 2000, Filed

NOTICE: [**1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. CERTIFIED FOR PARTIAL PUBLICATION - Under California Rules of Court, rule 976(b) and 976.1, the introductory paragraph, Factual and Procedural Background, Discussion I and Conclusion are certified for publication.

DISPOSITION: Reversed and remanded with directions.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff appealed from an order of the Superior Court of San Diego County, California, which denied his motion to recover from defendant costs plaintiff incurred in making a cash deposit which stayed foreclosure proceedings initiated by defendant.

OVERVIEW: Pursuant to a development agreement, defendant advanced the cost of improvements to plaintiff's property, which plaintiff secured with a deed of trust. When plaintiff learned defendant did not have a contractor's license, plaintiff stopped paying defendant, who in turn recorded a notice of default. Plaintiff filed suit to stay foreclosure. The trial court entered judgment for defendant, concluding a contractor's license was unnecessary. Plaintiff obtained a loan, and deposited $ 2.5 million with the clerk of the court. When the appellate court reversed that decision, plaintiff sought to recover over $ 200,000 in expenses he had incurred in making his deposit, under Cal. R. Ct. 26(c). The trial court denied the request. On appeal the court reversed. Under Cal. Civ. Proc. Code § 995.730, a bond and a deposit in lieu of a bond were to be treated as equivalents; since under Rule 26(c)(6) the cost of obtaining a bond was recoverable, the cost of making a cash deposit was also recoverable. Therefore, plaintiff was entitled to recover the reasonable and necessary expenses he incurred in making the cash deposit.

OUTCOME: Judgment was reversed and remanded with directions to award plaintiff reasonable and necessary interest expenses. there was no basis in the record upon which the trial court could properly deny plaintiff's request for the interest costs he incurred in making the deposit needed, since he was entitled to recover the expenses incurred in making the cash deposit.

CORE TERMS: deposit, surety bond, letter of credit, foreclosure, cash deposit, recoverable, license, California Rules, prevailing party, deed of trust...

Source: All Sources : / . . . / : **Federal and State Caselaw**
Terms: **name(cooper and westbrook torrey hills)** (Edit Search)
View: KWIC ± 25
Date/Time: Friday, December 1, 2000 - 1:46 PM EST

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UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: AB 678
TOPIC: Contractors.
DATE: 07/20/01
LOCATION: SEN. FLOOR
MOTION: Assembly 3rd Reading AB678 Papan By Kuehl
(AYES 23. NOES 10.) (PASS)

AYES
****

Alarcon	Alpert	Burton	Chesbro
Costa	Dunn	Escutia	Figueroa
Karnette	Kuehl	Machado	Morrow
Murray	O'Connell	Ortiz	Perata
Polanco	Romero	Soto	Speier
Torlakson	Vasconcellos	Vincent	

NOES
****

Ackerman	Battin	Brulte	Haynes
Johnson	Margett	McClintock	Monteith
Oller	Poochigian		

ABSENT, ABSTAINING, OR NOT VOTING
****

Bowen	Johannessen	Knight	McPherson
Peace	Scott	Sher	

VOTES - ROLL CALL
MEASURE: AB 678
AUTHOR: Papan
TOPIC: Contractors.
DATE: 04/24/2001
LOCATION: ASM. JUD.
MOTION: Do pass as amended and be re-referred to the Committee on Business and Professions.
(AYES 8. NOES 0.) (PASS)

AYES
****

Steinberg Bates Corbett Dutra
Harman Longville Shelley Wayne

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

Robert Pacheco Jackson

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Governor's Chaptered Bill File, Chapter 226, 2001

That the attached transcript of 19 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

December 6, 2019

ALEX PADILLA
Secretary of State

ASSEMBLY BILL NO. 678 **2001 REGULAR SESSION** **CHAPTER 226**

9/22 AF

AUTHOR Papan

DATE RECEIVED August 24, 2001

LAST DAY TO ACT September 5, 2001

___	LC	___	___	LEGAL	___	___	PUC	___
___	BTH	___	___	OPR	___	___	DPA	___
___	CAL-EPA	___	___	RES	___	___	OSE	___
___	FIN	___	___	SCS	✓	___	TCA	___
___	F&A	___	___	YAC	___	___	___	___
___	HHSA	___	___	OCJP	___	___	___	___
___	DIR	___	___	___	___	___	___	___

AUTHOR PHONE: [illegible]

DATE: 9/4 12:20

CALL LOC: Car Office

CONTACT: Jenny

ACTION OF GOVERNOR Sept 1 2001

✓ SIGN	SIGN W/MSG.	VETO	RED./ DEL.

LEG. COUNSEL: S L

RUMMY: Y N

ORDER:

AB 678 2001 CHAPTER 226

Assembly Bill No. 678 Chapter 226

Year 2001 Regular Session

Author Papan

Date Received Aug 24, 2001

Last Day to Act Sept 5, 2001

Action of Governor Sept 1, 2001

226

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: AB 678 **AUTHOR:** Papan **DATE:** 8/28/01

SENATE: 23-10 **ASSEMBLY:** 69-2 **CONCURRENCE:** 57-10

REVIEWED BY: **RECOMMENDATION:** Sign ☐ Veto ☐

SUMMARY: This bill allows a person who uses an unlicensed contractor to recover all compensation paid to the unlicensed contractor.

SPONSOR: The Honorable Quentin L. Kopp

SUPPORT: Department of Consumer Affairs

OPPOSITION: None Received.

FISCAL IMPACT: No fiscal impact.

ARGUMENTS IN SUPPORT: According to the sponsor, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

ARGUMENTS IN OPPOSITION: No substantive arguments in opposition.

BACKGROUND INFORMATION: Current law (1) requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more; (2) provides that contracting without a license shall be a misdemeanor; and (3) prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract. This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract, regardless of whether the person knew that the contractor was unlicensed prior to making any payments.

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: AB 678
TOPIC: Contractors.
DATE: 08/20/01
LOCATION: ASM. FLOOR
MOTION: AB 678 Papan Concurrence in Senate Amendments
(AYES 57. NOES 10.) (PASS)

AYES
****

Alquist	Aroner	Bates	Bogh
Briggs	Calderon	Canciamilla	Cardoza
Cedillo	Chan	Chavez	Chu
Cohn	Corbett	Correa	Cox
Diaz	Dickerson	Dutra	Frommer
Goldberg	Harman	Havice	Jackson
Keeley	Kehoe	Kelley	Koretz
Leach	Leslie	Liu	Longville
Lowenthal	Maddox	Maldonado	Matthews
Nakano	Negrete McLeod	Oropeza	Rod Pacheco
Papan	Pavley	Reyes	Richman
Salinas	Shelley	Steinberg	Strickland
Strom-Martin	Vargas	Washington	Wayne
Wesson	Wiggins	Wright	Zettel
Hertzberg			

NOES
****

Aanestad	Ashburn	Bill Campbell	John Campbell
Cogdill	Daucher	Hollingsworth	Mountjoy
Runner	Wyman		

ABSENT, ABSTAINING, OR NOT VOTING
****

Cardenas	Firebaugh	Florez	Horton
La Suer	Leonard	Migden	Nation
Robert Pacheco	Pescetti	Simitian	Thomson
Wyland			

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: AB 678
TOPIC: Contractors.
DATE: 07/20/01
LOCATION: SEN. FLOOR
MOTION: Assembly 3rd Reading AB678 Papan By Kuehl
(AYES 23. NOES 10.) (PASS)

AYES
****

Alarcon	Alpert	Burton	Chesbro
Costa	Dunn	Escutia	Figueroa
Karnette	Kuehl	Machado	Morrow
Murray	O'Connell	Ortiz	Perata
Polanco	Romero	Soto	Speier
Torlakson	Vasconcellos	Vincent	

NOES
****

Ackerman	Battin	Brulte	Haynes
Johnson	Margett	McClintock	Monteith
Oller	Poochigian		

ABSENT, ABSTAINING, OR NOT VOTING
****

Bowen	Johannessen	Knight	McPherson
Peace	Scott	Sher	

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: AB 678
TOPIC: Contractors.
DATE: 05/14/01
LOCATION: ASM. FLOOR
MOTION: AB 678 Papan Assembly Third Reading
(AYES 69. NOES 2.) (PASS)

AYES
****

Aanestad	Alquist	Aroner	Bates
Bogh	Briggs	Calderon	Bill Campbell
John Campbell	Canciamilla	Cardenas	Cardoza
Cedillo	Chan	Chavez	Cogdill
Cohn	Corbett	Correa	Cox
Daucher	Diaz	Dickerson	Dutra
Firebaugh	Florez	Frommer	Goldberg
Harman	Havice	Horton	Keeley
Kehoe	Kelley	Koretz	Leach
Leonard	Leslie	Liu	Longville
Lowenthal	Maddox	Maldonado	Matthews
Migden	Nakano	Nation	Negrete McLeod
Oropeza	Papan	Pavley	Pescetti
Reyes	Richman	Runner	Salinas
Shelley	Steinberg	Strickland	Strom-Martin
Thomson	Vargas	Washington	Wayne
Wesson	Wiggins	Wright	Zettel
Hertzberg			

NOES
****

Hollingsworth	Mountjoy

ABSENT, ABSTAINING, OR NOT VOTING
****

Ashburn	Jackson	La Suer	Robert Pacheco
Rod Pacheco	Simitian	Wyland	Wyman
Vacancy			

STATE AND CONSUMER SERVICES AGENCY — **ENROLLED BILL REPORT**

DEPARTMENT	AUTHOR	BILL NUMBER
Consumer Affairs	Papan	AB 678

SPONSOR	RELATED BILLS:
Judge Quentin Kopp	AB 264 (2001), AB 794 (2001), AB 1534 (2001), SB 26 (2001), SB 135 (2001), SB 355 (2001), SB 771 (2001), AB 2833 (2000), SB 2029 (2000)

SUBJECT
Unlicensed Contractors

BILL SUMMARY:

This bill would allow a person who uses an unlicensed contractor to recover all compensation paid to the unlicensed contractor.

According to the sponsor, former State Senator and now Judge Quentin Kopp, the bill is intended to address Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, where the court, in an unpublished portion of the opinion, referred to Business and Professions Code §7031(a) that prohibits an unlicensed contractor from recovering fees, but does not require an unlicensed contractor to refund any compensation already paid by the property owner.

The bill is intended to protect the public and encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract.

LEGISLATIVE HISTORY:

AB 794 (Shelley, 2001) would prohibit a licensed contractor from inserting into any contract with an employee specified unlawful contract provisions set forth in the Civil Code. The first hearings on this bill in the Assembly Judiciary were cancelled twice at the author's request.

AB 1534 (Longville, 2001) would require a commercial property owner who contracts for a work of improvement, for construction, alteration, addition to, or repair of the property to provide to the original contractor, if a lending institution is providing a construction loan, a copy of the recorded construction mortgage or deed of trust that shall disclose the amount of the construction loan. The bill would also require an owner to provide security for the project by either a payment bond, irrevocable letter of credit, or a construction security escrow account, as specified. These requirements would not apply to the construction of single-family residences.

SB 26 (Figueroa, 2001) would, among other things, extend the authority of the Contractors' State License Board to appoint a Registrar of contractors to July 1, 2003.

SB 135 (Figueroa, 2001) would require the Contractors' State License Board to disclose complaints against licensed contractors that have been referred for investigation due to a probable violation that, if proven, would be appropriate for suspension or revocation of the contractor's license or criminal

VOTE: Assembly					VOTE: Senate				
Floor:	Aye	69	No	2	Floor:	Aye	23	No	10
Judiciary Committee:	Aye	8	No	0	Policy Committee:	Aye	6	No	0
Business & Professions Committee:	Aye	10	No	0	Fiscal Committee:	Aye		No	

RECOMMENDATION TO GOVERNOR: SIGN X VETO ____ | DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: Kathleen Hamilton DATE 8/16/01 | AGENCY SECRETARY DATE 8/23/01

08/16/0

prosecution. The bill would require a disclaimer that would accompany the disclosure of a complaint. The Joint Legislative Sunset Review Committee is the sponsor of SB 135.

SB 355 (Escutia, 2001) would abrogate the holding in Aas v. Superior Court of San Diego, (2000), 24 Cal. 4th 627. The California Supreme Court ruled that causes of action for construction defects based on violations of the building code or other applicable codes require a showing of death, bodily injury, or existing property damage. This bill would alternatively state that a cause of action for construction defects based on violations of the building code or other applicable codes does not require a showing of death, bodily injury, or existing property damage and define the cost of repairing the code violation as the damage that may be recoverable in such cause of action.

SB 771 (Committee on Business and Professions, 2001) was previously an omnibus bill that, among other things, would have authorized the Contractors' State License Board to meet once each quarter, allowed contractors to deal with underground storage tanks, allowed the Registrar to issue citations to unlicensed individuals and unregistered salespersons the Registrar believes violated the Contractors' State License Law and to persons who use an incorrect contractor's license number to defraud others, and would have also authorized the registrar to use collection agencies to collect civil penalties. This bill was amended on July 23, 2001, and now addresses unsolicited and unwanted telephone solicitations. The previous provisions will be added to omnibus bill SB 724 (Senate Business and Professions Committee).

AB 2833 (Alquist, 2000) would have required the Contractors' State License Board to publish on its Internet website by September 15, 2001, a listing of the names and business addresses of all its licensed contractors, including information regarding any disciplinary action, pending investigation or dispute mediation against a licensee. This bill would also have required a new mediation process. The author requested that this bill be withdrawn.

SB 2029 (Figueroa, Chapter 1005, Statutes of 2000) extended the sunset date for the Contractors' State License Board by two years to July 1, 2003, added two additional public members to increase the membership from 13 to 15, established a Contractors' State License Enforcement Program Monitor and required the Board to perform several studies. The Joint Legislative Sunset Review Committee sponsored this law.

DEPARTMENT SERVICE AND PROGRAM HISTORY:

The Contractors' State License Board was established in 1929 to regulate the construction industry. It currently licenses and regulates 218,000 active licensees in more than 40 license classifications that includes general contractors and home improvement contractors. The Board is responsible for investigating complaints filed by consumers against licensed and unlicensed contractors for poor workmanship and construction defects. In fiscal year 1999-2000, the Board received over 26,000 complaints. Of those investigated and confirmed as possible violations, 897 complaints were arbitrated. The Board issued 802 citations to licensed contractors, and 1,644 citations to unlicensed contractors.

SPECIFIC FINDINGS:

Existing law:

- Prohibits an unlicensed contractor from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. Specifically, 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 for which 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 [Business and Professions Code §7031. (a)].

- Requires anyone who contracts to do construction work to be licensed by the Contractors State License Board if the total price of the job is $500 or more.

- ***Makes any unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs an infraction punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000).***

- Makes the following a misdemeanor, punishable by a fine of not less than $100 nor more than $5,000 or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment:

    - For an unlicensed person to act in the capacity of a contractor;
    - For an unlicensed person to practice architecture;
    - For an unlicensed person to practice landscape architecture;
    - For an unlicensed engineer to practice engineering;
    - For an unlicensed person to practice land surveying.

This bill would:

- Provide that a person who utilizes the services of an unlicensed contractor may bring a civil action to recover any compensation paid to the unlicensed contractor for work performed. ***This would be regardless of whether the person knew that the contractor was unlicensed prior to making any payments.***

COMMENTS

- As amended on May 1, 2001, this bill would have negated a person's right to recover any compensation paid to an unlicensed contractor if the person knew that the contractor was unlicensed prior to the time any payment was made. This "prior knowledge" standard has now been removed from the bill to give consumers an absolute right to recovery from unlicensed contractors to increase the bill's deterrent effect against unlawful contracting.

- Currently, there is no provision in existing law covering the California Architects Board, the Landscape Architects Technical Committee, or the Board of Professional Engineers and Land Surveyors that allows a consumer to bring such a cause of action.

- Under the Code of Civil Procedure §1029.8, an unlicensed person who causes injury or damage to another person resulting from services performed without license as required, is liable to the injured person for the damages assessed in a civil action. Nothing in this language specifically addresses a homeowner's right to bring an action to recover compensation paid to the unlicensed person without a showing of injury or harm.

- Under Labor Code §1021, any licensed contractor who employs a worker to perform services for which a license is required, is subject to $100 civil penalty per employee for each day of such employment, in addition to any other penalty provided by law.

- Under Government §13959, crime victims may obtain restitution for the pecuniary losses they suffer as a direct result of criminal acts through compensation from the Crime Victims' Restitution Fund because it is in the public interest to assist residents of the State of California. Pecuniary losses are defined as expenses for which the victim has not been and will not be reimbursed from any other

source. Restitution is administered through the California Victim Compensation and Government Claims Board.

- Likewise, this bill would also promote the public interest by allowing a person who hires an unlicensed contractor to recover the expenses incurred from paying for the unlicensed practice of a profession regulated by the state that constitutes a misdemeanor offense.

HISTORY OF AMENDMENTS

- As introduced on February 22, 2001, this bill would have allowed any person who utilizes the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract. The bill was amended on 5/1/01 to add a caveat that stated "unless the person knew that the contractor was unlicensed prior to the time that any payments were made to the contractor". This language was subsequently removed to give consumers absolute and unrestricted recourse when the bill was amended again on 7/03/01.

CSLB Supports This Bill

- The Contractors' State License Board is in support of this bill, which the Board believes reinforces the existing laws prohibiting unlicensed individuals from providing contracting services. In addition, this bill would extend the current law that precludes an unlicensed contractor from suing for unpaid work by allowing a consumer who uses an unlicensed contractor to recover funds paid to the unlicensed contractor. In addition, the Department sees this bill as supplementing the Board's existing ability to use its administrative authority through the citation and fine process to address unlicensed activity.

REGULATIONS:

None

LEGISLATIVELY-MANDATED REPORTS:

None

COMMISSIONS AND BOARDS:

None

FISCAL IMPACT:

None

NATIONAL INQUIRY:

Federal:

Not applicable

Other States:

Of the 50 states, only 15 (Colorado, Idaho, Illinois, Indiana, Kentucky, Maine, Minnesota, Missouri, New York, Ohio, Pennsylvania, South Dakota, Texas, Vermont and Wyoming) do not license or regulate the contracting industry.

In Oklahoma, SB 354 (Synder, 2001) was signed into law on 6/4/01 creating the Construction Industries Commission to license and regulate the plumbing, electrical, mechanical, fire sprinkler, and alarm industries and building and construction inspectors.

In Oregon, HR 2188 (Governor Kitzhaber, 2001) was signed into law on 5/21/01 to eliminate the Construction Contractors Training Board and create the Construction Contractors Board to license and regulate contractors.

In Hawaii, SB 263 (Chun Oakland, 2001) was introduced on 1/26/01 to prohibit unlicensed contractors from keeping any money paid to them because to allow otherwise would defeat the licensing. Unlicensed contractors would be required to reimburse the moneys paid to consumers. This bill is most like AB 678. This bill was carried over to the next Legislative Session (2002).

In Florida, SB 428 (Dyer, 2001) was signed into law on 6/13/01 that increased the administrative fines that can be imposed for unlicensed contracting and allows the Department of Business and Professional Regulation to impose reasonable investigative and legal costs for prosecution of such violations. Any local governing body that contributes information related to this activity could now collect 30 percent of the fine collected after investigative and legal costs for prosecution are deducted. The department is also now required to create a website accessible to the public that lists the names of persons involved in unlicensed contracting.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

- It is contrary to good public policy to allow a person who violates the law to retain the proceeds from h/her illegal activity.
- This bill would provide consumers with definite recourse to recover any monies paid to an unlicensed contractor regardless of whether the consumer had prior knowledge that the person did not possess a valid and current contractor's license.
- This bill would deter those persons who act as contractors without a required state license from soliciting their services to consumers.
- This bill would prevent unlicensed contractors from being unjustly enriched by receiving and retaining payments for work they may never start or complete.
- The bill would be consistent with current state law to allow the victim of an unlawful act to recover any resulting pecuniary losses.
- The Contractors' State License Board is in support of this bill, which the Board believes reinforces the existing laws prohibiting unlicensed individuals from providing contracting services. Furthermore, the provisions of this bill would supplement the Board's existing ability to use its administrative authority through the citation and fine process to address unlicensed activity.
- This bill would extend the current law that precludes an unlicensed contractor from suing for unpaid work by allowing a consumer who uses an unlicensed contractor to recover funds paid to the unlicensed contractor.

Arguments in Opposition to the Bill:

Though there is no registered opposition, it could be argued that:

- This bill is unnecessary because civil remedies are already available under the Code of Civil Procedure.

VETO MESSAGE
Assembly Bill 678 (Papan), As Amended July 3, 2001

I am returning Assembly Bill 678 without my signature.

This bill would provide that persons who use an unlicensed contractor can bring a civil action to recover all compensation paid to the unlicensed contractor, even in instances when the consumer had prior knowledge that the contractor is unlicensed.

This bill, by allowing persons with prior knowledge of the licensure status of an unlicensed contractor to sue for reimbursement of compensation, has the potential for rewarding unscrupulous consumers who could intentionally hire unlicensed contractors and then bring an action to recover any compensation paid for the work already performed. In cases of a duplicitous nature, such as when a consumer and an unlicensed contractor have agreed to ignore California's licensure requirements that often provide the consumer with a significant savings compared to the cost of working with a licensed contractor, it seems fundamentally unfair that the system should reward consumers who knowingly participate.

Although I strongly agree that unlicensed contractors must not be allowed to profit from their illegal activities, I can not sign a bill that has the potential of rewarding a ***knowing*** accomplice of these activities.

Sincerely,

GRAY DAVIS, GOVERNOR

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 678

THIRD READING

Bill No: AB 678
Author: Papan (D)
Amended: 7/3/01 in Senate
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE : 6-0, 6/25/01
AYES: Figueroa, Johannessen, Machado, Morrow, O'Connell, Polanco

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 69-2, 5/14/01 - See last page for vote

SUBJECT : Unlicensed contractors

SOURCE : Judge Quentin L. Kopp

DIGEST : This bill allows individuals who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

ANALYSIS : Existing law:

1. Requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board if the total price of the job is $500 or more.

2. Provides that contracting without a license shall be a misdemeanor.

CONTINUED

3. Prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract.

This bill authorizes persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

Comments

Purpose. According to the sponsor, Judge Quentin Kopp, this bill is intended to further encourage unlicensed contractors to become licensed by specifically authorizing an individual who has used the services of an unlicensed contractor to bring an action to recover all compensation already paid to the unlicensed contractor for performance of any act or contract. The sponsor believes that permitting recovery of compensation paid to the unlicensed contractor will strengthen the law "in a way which criminal sanctions and enforcement do not seem to do."

Background. In a recent case, Cooper v. Westbrook Torrey Hills, LP (2000) 81 Cal. App. 4th 1294, the court referenced Business and Professions Code Section 7031(a) as prohibiting an unlicensed contractor from recovering fees, but not requiring any refund of compensation already paid to the contractor.

Cooper relied on Culbertson v. Cizek (1964) 225 Cal. App. 2d 451, 473, in which the court permitted the unlicensed contractor to offset "as a defense against sums due the plaintiffs any amounts that would otherwise be due Cizek under his contract." This bill is intended to clearly state that those using the services of unlicensed

contractors are entitled to bring an action for recovery of compensation paid.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (7/17/01)

Judge Quentin L. Kopp (source)

California Landscape Contractors Association
Construction Industry Legislative Council

Support with amendments
American Fence Contractors' Association, California Chapter
California Fence Contractors' Association
Engineering Contractors' Association
Flasher/Barricade Association

ARGUMENTS IN SUPPORT: The sponsor asserts the Legislature has intended that the public be protected from unqualified contractors by requiring that all contractors be licensed. In order to ensure this requirement is met, current law specifically prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract, regardless of the merits of the cause of action brought by the unlicensed individual. This bill is, according to the sponsor, "not only consistent with the historical policy of our state but strengthens that policy substantially."

According to the Senate Business and Professions Committee analysis, concern has been voiced that this bill could cause problems for the legitimate contractors in California. The concern deals with the issue of incidental/supplemental work.

ASSEMBLY FLOOR
AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Briggs,

Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Horton, Keeley, Kehoe, Kelley, Koretz, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Zettel, Hertzberg

NOES: Hollingsworth, Mountjoy

CP:kb 7/17/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AB 678 (PAPAN)
CONTRACTORS

Version: 7/3/01 Last Amended
Vote: Majority
None

Vice-Chair: Robert Pacheco
Tax or Fee Increase: No

Authorizes a person who utilizes an unlicensed contractor to bring an action in court for recovery of all compensation paid to the unlicensed contractor for performance of any act or contract.

The "None" is based on a balance between the effort of this bill to further discourage home improvement contracts with unlicensed contractors and not otherwise provide an unjust enrichment of one who knew or should have known that he or she was dealing with an unlicensed contractor.

Policy Question

Should any person, who may or may not have had actual knowledge at the time of entering an agreement with a contractor that the contractor was not licensed, be authorized to 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?

Summary

Authorizes a person who utilizes the services of an unlicensed contractor to 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.

SENATE AMENDMENTS delete the provision that would otherwise prohibit authorization to bring an action in court where the person knew that the contractor was unlicensed prior to making any payments to the contractor.

Support

Quentin Kopp, Superior Court Judge of San Mateo County (Sponsor); American Fence Contractors Association, California Chapter; California Fence Contractors' Association; California Landscape Contractors Association; Engineering Contractors' Association; and Flasher/Barricade Association.

Opposition

None on file.

Arguments In Support of the Bill

1. The sponsor, Judge Quentin Kopp of San Mateo County Superior Court, contends that permitting recovery of compensation paid to the unlicensed contractor would strengthen the law in a way which criminal sanctions and enforcement do not seem to do.
2. In response to whether such recovery should be authorized to persons who knowingly entered into such contracts with an unlicensed contractor, the sponsor cites *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997-998 (and other appellate holdings) for upholding the proposition that the law should not recognize a contractual or quasi-contractual right for an unlicensed contractor to bring suit to collect for services performed from one who knew of his or her unlicensed status. The sponsor apparently views the policy against any compensation to an unlicensed contractor under such circumstances as so paramount to accord no balance of consideration to such contractor. To further reinforce his position, short of further statutory clarification of the provision or legislative intent language, the sponsor would apparently have his letter on such point published in the Assembly Journal (which would enable future courts reviewing cases involving purchasers with knowledge of an unlicensed contractor to accept the letter as further clarification of the legislature's intent on such issue).

Assembly Republican Judiciary Votes (8-0) 4/24/01
Ayes: Bates, Harman
Noes: None
Abs. / NV: Robert Pacheco

Assembly Republican Business and Professions Votes (10-0) 5/8/01
Ayes: Bogh, Kelley, Leach
Noes: None
Abs. / NV: John Campbell

Assembly Republican Floor Votes (69-2) 5/14/01
Ayes: All Republicans, except
Noes: Hollingsworth, Mountjoy
Abs. / NV: Ashburn, La Suer, Robert Pacheco, Rod Pacheco, Wyland, Wyman

Senate Republican Floor Votes (23-10) 7/20/01
Ayes: Morrow
Noes: All Other Republicans Except
Abs. / NV: Johannessen, Knight, Mc Pherson

Concurrence In Senate Amendments
Page 93 Item 42

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OFFICE OF LEGISLATIVE COUNSEL
State Capitol, Suite 3021
Sacramento, California 95814-4996
TELEPHONE (916) 445-3057
FACSIMILE (916) 322-0769
INTERNET www.legislativecounsel.ca.gov
EMAIL LegislativeCounsel@lc.ca.gov

Legislative Counsel of California

BION M. GREGORY

August 24, 2001

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

ASSEMBLY BILL NO. 678

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Assembly Member Papan and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

Alvin D. Gress

By
Alvin D. Gress
Principal Deputy

ADG:sjk

Two copies to Honorable Louis J. Papan,
pursuant to Joint Rule 34.

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
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