

No License Clearly Means No Rights – (Construction Licensing)

When a subcontractor performing work on a public project did not get paid the amount it was allegedly owed, the subcontractor filed suit against the general contractor (GC) and its surety. The GC and surety defended on the grounds that the subcontractor was not licensed as required by Florida law and could therefore not recover. Relying on a provision of Florida Statutes § 489.128, which provides that, “as a matter of public policy, contracts entered into on or after October 1, 1990, by an unlicensed contractor shall be unenforceable in law or in equity by the unlicensed contractor,” the trial court agreed with the GC and surety and entered a summary judgment in their favor.

Clearly not happy with that outcome, the subcontractor appealed, arguing that (a) it was not required to be licensed because the general contractor was merely paying it to supply labor and equipment to repair and construct a water pipeline and perform excavation work, and (b) it was essentially being supervised by the general contractor, as opposed to supervising its own work. The appellate court was not sympathetic.

As to the subcontractor’s first argument, the Court began by looking at the following definition of a “Contractor” as set forth by the Florida Legislature:

The person who is qualified for, and shall only be responsible for, the project contracted for and means ... the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others

Since the overall work performed in this instance (viz., the construction of water pipelines and underground facilities) constituted construction contracting under Florida law, and since the subcontractor undertook to “construct, repair, and add improvements to real estate [the job site] through its own employees,” the subcontractor was required to be licensed to perform the work in question. Because the subcontractor was not licensed, it could not enforce its contract for payment.

As for the subcontractor's second argument, while there is a recognized exemption from licensing requirements for the "employees of a licensed contractor performing work within the scope of the license," that exemption could only apply in this instance to employees of the licensed GC. Since this subcontractor was not itself an employee of the GC, the exemption was completely inapplicable.

While not discussed directly in the Court's opinion, it's worth noting that the governing statute dealing with unlicensed contractors further provides that if a contract is rendered unenforceable because a contractor was not licensed where required, that contractor shall also have no lien or bond claim for any labor, services, or materials provided under the contract or any amendment thereto.

In the end, No License Clearly Means No Rights!

By: Andrew M. Feldman, Esq.
E-mail: AFeldman@AMFLegal.com
Copyright 2006, All Rights Reserved.