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SO HERE WE GO AGAIN

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The Connecticut Supreme Court has yet again denied a contractor money earned for violation of The Home Improvement Act. (HIA). The contractor **won** at the Trial Court; the contractor **won** at the Appellate Court and the contractor **lost** at the Connecticut Supreme Court. The contractor was successful in the lower courts for establishing that the home owner acted in bad faith in not paying him notwithstanding his violation of the HIA.

The Trial Court found that the agreement for improvements to a residence did not satisfy the requirements of The Home Improvement Act (section 20-249) and did not satisfy the requirements of subsection (f) of the Act which allows a contractor who has complied with five of the eight requirements of the HIA to at least recover payment for work based upon the reasonable value of services if the court felt it would be inequitable to deny such a recovery. The contractor failed to comply with both provisions of the Act because the agreement was not signed by the contractor. It did not contain a completion date and the contractor failed to prove he delivered a completed copy of the contract to the homeowner.

The agreement provided that the homeowner would pay the contractor \$ 45.00 per man hour plus any expenses to include dumpsters and materials. The contractor relied on the time and material provision of the agreement and never executed “a contract with firm pricing”. The parties discussed a total cost estimate of approximately \$ 400,000.00. The agreement anticipated a further contract with firm pricing once full plans were provided to the contractor “with things constantly changing from day to day”.

[Sound familiar?]

The plaintiff began work on the renovation project and received numerous work orders related to the project from multiple sources including the homeowner, his wife, the architect and the wife’s assistant. The Trial Court found that these four people did not have a complete understanding of the work that was being requested and none of them ever inquired about the cost of doing the various items of work that they requested. The written plans were frequently being revised by the homeowner and others acting on his behalf. **[Sound familiar yet?]** The contractor periodically requested payments from the homeowner; he did not send itemized bills. He did not retain all invoices and time sheets; he did not keep a daily

construction log or other records that would show which tradesmen were on the site, what work was performed and what materials were delivered to the site. [**Note this is a check list of what not to do**]

Along the way this \$ 400,000.00 project went to \$ 810,000.00; then \$ 886,000.00 and then a “final” cost of \$ 1,188,000.00. Payments received totaled \$ 985,000.00 and the contractor claimed the balance of \$203,000.00. The contractor estimated at that point in time the project was 98% complete.

The contractor did not provide the cost of each item or any backup documentation. The homeowner argued that he paid \$ 985,000.00 as full payment.

The contractor sought to foreclose his mechanics lien and sued for breach of contract and unjust enrichment. The homeowner defended the lawsuit on the grounds that the contract violated The Home Improvement Act. The contractor responded that the homeowner’s reliance on The Home Improvement Act was in bad faith and so the battle lines were drawn.

The Trial Court found that the homeowner did act in bad faith because (1.) the home owner and others on his behalf made numerous requests for extra work without inquiring as to the expense, (2.) the home owner was aware that the contractor owed significant debts to his subcontractors and suppliers, (3.) even though the homeowner terminated the contract, the homeowner continued to ask the plaintiff to work on the project without any intention of making any further payments, (4.) the homeowner “unilaterally and arbitrarily” selected the final price that he was willing to pay (5.) the homeowner knew that the failure to pay the plaintiff could put him out of business and he took advantage of this fact, (6.) the home owner induced the contractor to continue to work suggesting he might make further payments even though he had no intention of doing so and (7.) the homeowner claimed as an attorney that he would represent himself in any action even though he never intended to do so . Because of these findings, The Trial Court and The Appellate Court held that the contractor could recover the balance due.

The Connecticut Supreme Court disagreed. It held that bad faith implies both actual and constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill some duty or some contractual obligation....prompted by a sinister motive. When a contractor fails to articulate the scope of work or the contract price and a good faith dispute arises about these items that does not amount to bad faith. The Supreme Court noted that when the homeowner stopped payment the price of the project was at \$ 886,000.00 with certain items yet to be completed by the contractor but the homeowner has already paid \$ 985,000.00. When the final price rose to 1.1 million, that increase gave rise to a genuine good faith disagreement- -not bad faith. The Supreme Court noted the fact that the homeowner paid 1 million dollars on a \$ 400,000.00 contract and that certainly was not evidence of bad faith by the homeowner. Finally, the Supreme Court stated that the trial court did not find that the homeowner took the services knowing that the he had an “escape hatch” because of the non-compliant contract; the standard for bad faith in other Appellate decisions.

Major Lessons to be learned:

(1.) Comply with The Home Improvement Act

(2.) At a minimum, comply with having your contract in writing signed by both parties, have a notice of rescission, provide a starting date and a completion date and make sure you are a registered contractor. You can then take advantage of the legislative provision to at least claim the reasonable value of your work even if you cannot get the agreed upon price or your agreed upon hourly rate.

Additional Items to be learned:

(1.) Present itemized bills

(2.) Retain all invoices

(3.) Retain all timesheets

(4.) Keep a daily construction log or other records that show which tradesmen were on site, what work was performed and what materials were delivered to the site.

(5.) Make sure all change orders are in writing, signed by the homeowner even if price is not known mark the change order as cost plus 15% or cost plus \$ 45 an hour or some other indication as to how the price will be calculated.

CONCLUSION

A contractor has two defenses to a claim that his contract violates The Home Improvement Act.

The first defense is the common law defense that the homeowner acted in “bad faith”. All contracts have an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement. So even if you did not follow The Home Improvement Act you may be able to recover monies due if you can show either actual or constructive fraud or a design to mislead or deceive you or a neglect or refusal to fulfill some duty or some contractual obligation prompted by a sinister motive such as knowingly receiving the benefits with no intention of paying.

A second defense is the legislative defense found in The Home Improvement Act subsection (f). If your agreement doesn't contain the entire agreement or the date of the transaction or the name and address of the contractor and his registration number you may still recover the reasonable value of the services that you rendered.

DO NOT DEPEND ON DEFENSES..... COMPLY WITH THE HIA AND KEEP GOOD RECORDS.