

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

BEN ARSHI,

Plaintiff, Cross-defendant and  
Appellant,

v.

DAVID PIRZADEH,

Defendant, Cross-complainant and  
Respondent.

A146705

(Lake County  
Super. Ct. No. CV410769)

Plaintiff and cross-defendant Ben Arshi appeals from judgments dismissing his first amended complaint and awarding damages against him on the cross-complaint of David Pirzadeh. The former was entered after the court sustained Pirzadeh’s demurrer to the first amended complaint without leave to amend, and the latter was entered following a bench trial on the cross-complaint.<sup>1</sup> The claims in Arshi’s amended complaint were rejected on the ground that he is seeking recovery for work performed as a building contractor without a contractor’s license, in violation of the Contractors’ State License Law (Bus. & Prof. Code, § 7000 et seq.),<sup>2</sup> and damages were awarded on the cross-

---

<sup>1</sup> The second judgment was entered some 11 months after entry of the first judgment. Although the court properly entered an order sustaining the demurrer, as we shall explain in text, judgment on the complaint should not have been entered until resolution of the cross-complaint. Arshi properly did not appeal when the original “judgment” was entered, since it was not the final judgment in the case, and his notice of appeal timely filed after entry of the second judgment properly indicates that he is appealing from both judgments. (See 9 Witkin, Cal. Procedure (5th ed. 2008) § 117, p. 180.)

<sup>2</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code.

complaint to reimburse Pirzadeh for amounts paid to Arshi for that work. We conclude the harsh consequences of performing contractor services without licensure were properly imposed by the trial court, and we shall therefore affirm its decisions.

### **Background**

The factual background of the controversy is set forth in the thorough statement of decision issued by the trial court after trial on the eighth cause of action of Pirzadeh's cross-complaint. We adopt it here.

“As stipulated by the parties and as established by the evidence, Pirzadeh, as sole owner in fee simple, purchased a certain vacant residential lot on July 18, 2001, which Pirzadeh alone has continuously owned, alone and without any co-owner, through the date of trial. The lot is located at and commonly described as 16817 Buckhorn Road, Hidden Valley Lake, Lake County, California . . . (the ‘Property’). Shortly thereafter, Pirzadeh had discussions with Arshi about the construction of a residential style home on the Property.

“Pirzadeh and Arshi came to a loosely defined oral agreement for the construction of the home by Arshi. The parties believed that this oral agreement was sufficient for this transaction based upon the parties' long standing friendship, from the nature of Pirzadeh's personal, professional, and fiduciary trust and reliance on Arshi, and from the fact that this is the manner in which they handled other past business transactions between them. Among other things, Arshi acted from time to time as Pirzadeh's real estate broker, helped Pirzadeh sell his business and provided advice, including, but not limited to, tax, business and personal advice to Pirzadeh.

“The agreement was structured such that it was anticipated that the construction cost for the house would be approximately \$150,000. Pirzadeh agreed to pay the construction cost of the house to Arshi by transferring to Arshi his one-half interest in the Vallejo property, which they owned as tenants in common, at the value of \$150,000.

“Arshi agreed to construct the house on Pirzadeh's Property, but to do so he funded the construction project by taking out a \$150,000 loan against another residential property which he owned.

“Arshi began construction of the house, which was built on a hillside. Unanticipated construction costs were incurred due to a previously unknown rock formation on the Property. Since it was now apparent to Arshi that the construction costs were going to exceed \$150,000, he asked Pirzadeh for additional payments. Pirzadeh responded by paying Arshi, through Unicorn Properties, three cash payments totaling \$47,000 . . . .

“Unicorn Properties is a fictitious business name for a sole proprietorship business entity owned solely by Arshi. Arshi also has another business entity which is named Unicorn Development. Unicorn Development is actually a partnership between Arshi and another person. This other person was a licensed contractor, but was not involved with the construction of the Buckhorn house. . . .

“The oral agreement in this instance was between Pirzadeh and Arshi individually, and not between Pirzadeh and Unicorn Development. Arshi testified that the Buckhorn construction project was not run through the partnership because he did not want to split it with his partner.

“Pirzadeh became concerned when there were additional requests by Arshi for additional payments beyond the \$47,000 already paid. Pirzadeh decided that instead of giving the funds to Arshi to pay for additional labor and materials necessary to complete the construction of the Buckhorn house, he would pay the suppliers of the labor and materials directly. These direct payments for labor and materials totaled \$13,116.21.”

In October 2011, Arshi filed a complaint against Pirzadeh containing four causes of action. The first cause of action seeks to impress an equitable lien of \$230,000 on the Buckhorn property based on Pirzadeh’s alleged oral agreement to pay Arshi “the cost of labor and materials to build the house.” The second cause of action seeks to impose a constructive trust on ownership of the home based on the allegation that Pirzadeh “violated the confidential relationship with [Arshi] by failing and refusing to pay the \$230,000 incurred by [Arshi] to build the home.” The third cause of action is for fraud and deceit and includes the following allegations: “[Pirzadeh] promised [Arshi] that [Pirzadeh] would reimburse [Arshi] for all labor and material costs incurred by [Arshi] in

building [Pirzadeh's] house. ¶ . . . ¶ . . . In reliance on the promise of [Pirzadeh], [Arshi] built a house for the defendant. . . . ¶ . . . ¶ . . . In reliance on these representations, [Arshi] was induced to and did build a home for [Pirzadeh].” The fourth cause of action seeks recovery based on a common count, alleging that Pirzadeh “became indebted to [Arshi] in the sum of \$230,000 for work, labor, and materials performed and provided by [Arshi] to [Pirzadeh].”

After answering and filing his cross-complaint, Pirzadeh filed a motion for judgment on the pleadings on the ground that the complaint did not allege that Arshi held a contractor's license and that recovery was therefore barred by section 7031, subdivision (a). The court, after analyzing from the bench numerous cases under the Contractors' State License Law, granted the motion with leave to amend. Arshi then filed his first amended complaint, containing only two causes of action, one for breach of contract and the other on a common count. The amended complaint alleged for the first time that Arshi was doing business as Unicorn Development, that he “was exempt from the California Contractor licensing laws because this was an owner builder project,” and that “[i]f plaintiff [doing business as] Unicorn Development was not exempt from the licensing laws for any reason, plaintiff [doing business as] Unicorn Development was properly licensed through the State Contractors License Board at all relevant times.” The amended complaint also alleges that “plaintiff Arshi and defendant Pirzadeh entered into a series of oral agreements over a period of years in which plaintiff agreed to assist defendant to construct a residential home on the subject property owned by defendant.” The amended complaint attaches as an exhibit the first page of a contractor's license issued to Unicorn Development, a partnership, that was in effect between July 27, 2000 and July 31, 2008.

Pirzadeh promptly demurred to the first amended complaint arguing, among other things, that Arshi had again failed to allege that he was a licensed contractor and thus remained unable to pursue his claim. Pirzadeh requested the court to take judicial notice of the second page of the contractor's license issued to Unicorn Development, which names the partner who is licensed as an individual other than Arshi. The court's order

sustaining the demurrer first commented on the request for judicial notice, to which Arshi objected, as follows: “The court finds it very unusual that plaintiff uses the same document on the first page for the purpose of establishing a contractor’s license and yet argues that the second page of the document which names the person within the partnership who is licensed is inadmissible.” The court nonetheless denied the request and did not consider the content of page 2. However, the court ruled that the amended complaint still “failed to allege that [Arshi] is personally and properly licensed to perform work as a contractor as required pursuant to Business and Professions Code § 7031. Exhibit 1 [the first page of the license] provides that Unicorn Development is a partnership which status places a burden on the plaintiff to establish that he personally is a licensee. Business and Professions Code § 7028.5 declares: ‘It is unlawful for any person who is or has been a member, officer, director or responsible managing officer of a licensed co-partnership to individually engage in the business, or individually act, in the capacity of a contractor without having a license in good standing to so engage or act.’ Plaintiff has failed to provide such information in the [first amended complaint].” The court found that “plaintiff has not shown any reasonable possibility he can file an appropriate amendment to cure the defect” and, thus, sustained the demurrer without leave to amend.

Subsequently, the cause of action of Pirzadeh’s cross-complaint seeking to recover the \$47,000 Pirzadeh had paid Arshi for work performed on the Buckhorn house was tried before the court. The statement of decision reflects that “[c]onstruction of the Buckhorn house is the type of work for which a contractor’s license is required. Arshi acted as a contractor in connection with the building of the Buckhorn house. [Citations.] . . . By his own testimony, Arshi was not, and had never been, individually licensed as a contractor. . . . [¶] . . . [¶] Arshi contends there was no formal contract between the parties, but only some general understanding between them. The statute providing for recovery of compensation paid does not require a formal contract.” In response to the defense belatedly added by Arshi that he and Pirzadeh were partners, the court found “that the relationship between Pirzadeh and Arshi was not a partnership of any kind. . . .

[¶] There are two problems with Arshi’s new argument: [¶] . . . There are no facts showing that the partnership, even if did exist, carried any contractor’s license.

[¶] Second, . . . the partnership never existed, a fact supported by an abundance of oral and documentary evidence. [¶] . . . [¶] Considering all of the oral and documentary evidence, and observing the demeanor of the witnesses, both Pirzadeh and Arshi, and considering the underlying relationship between the parties, the court, in the exercise of its discretion, finds no sufficient contribution of any money, property or services to the carrying on of a joint business for the benefit together of Pirzadeh and Arshi, nor any degree of participation by Pirzadeh in the management and control of the construction of the Buckhorn house, or any sharing of profits and losses from the Buckhorn house. Therefore, the court finds that no partnership existed between the parties. ”

The court entered judgment for Pirzadeh against Arshi in the principal sum of \$47,000 plus interest and costs that brought the total judgment to \$89,907.32. Arshi timely filed a notice of appeal.

### **Discussion**

“To protect the public, the Contractors’ State License Law . . . imposes strict and harsh penalties for a contractor’s failure to maintain proper licensure. Among other things, the [law] states a general rule that, regardless of the merits of the claim, a contractor may not maintain any action, legal or equitable, to recover compensation for ‘the performance of any act or contract’ unless he or she was duly licensed ‘at all times during the performance of that act or contract.’ ” (*M W Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 418, quoting § 7031, subd. (a), italics omitted.)

Arshi contends that the judgment dismissing the first amended complaint “was monstrously unfair to Arshi and an unjustified windfall for Pirzadeh.” He argues that the trial court erred in denying him a trial “to present his arguments that he was exempt from the California contractor licensing laws” and “only sought repayment of his loan” of \$250,000 that he had advanced Pirzadeh “for building materials, costs, and labor.” However, the allegations of his original complaint—that he incurred these costs to “build

a home for [Pirzadeh]”—unquestionably brought him within the scope of the statute. Section 7026 defines a “contractor” to include “any person who undertakes to . . . construct . . . any building . . . or other structure . . . .” (See also *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 940.) “[W]here a party files an amended complaint and seeks to avoid the defects of a prior complaint either by omitting the facts that rendered the complaint defective or by pleading facts inconsistent with the allegations of prior pleadings . . . , the policy against sham pleading permits the court to take judicial notice of the prior pleadings and requires that the pleader explain the inconsistency. If he fails to do so the court may disregard the inconsistent allegations and read into the amended complaint the allegations of the superseded complaint.” (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 384.)

Arshi suggests that he was exempt from compliance with the statute, but makes no coherent argument that he falls within any of the exemptions provided in section 7044 (owner building on his or her own property) or any of the other exemptions in article 3 of the Contractors’ State License Law, sections 7040 et seq. (Exemptions).<sup>3</sup> Arshi places heavy reliance on *The Fifth Day, LLC v. Bolotin* (2009) 172 Cal.App.4th 939, but the facts in that case are readily distinguishable. The plaintiff seeking recovery in that case was retained to perform construction project management services under a contract that spelled out a long list of the specific services it was to perform. In holding that the plaintiff was not required to have been licensed as a contractor, the court held, “It is undisputed that Plaintiff neither contracted with Owner to perform any of the activities listed in section 7026’s definition of a contractor, nor performed any of those activities. Indeed, Owner entered into a construction contract with Fullmer Construction, a licensed

---

<sup>3</sup> Arshi alternatively contends in his appellate brief that he simply loaned money to Pirzadeh, that there was no enforceable agreement between them, that he was an employee of Pirzadeh, that he was no more than a friend assisting an owner-builder, and that he was a partner of Pirzadeh. Not only are these contradictory contentions inconsistent with the allegations of the original complaint, but they have been conclusively negated by the findings made after trial on the cross-complaint.

general contractor, to perform and/or supervise all construction on the project, and Fullmer Construction hired all of the subcontractors who performed construction services with respect to the project.” (172 Cal.App.4th at p. 948.)

Arshi suggests that the court abused its discretion in denying him the opportunity to amend the first amended complaint to allege that he and Pirzadeh were in a partnership to construct the residence. Arshi apparently did not request the trial court to permit him to amend to add such an allegation. In all events, such an amendment would not have cured the absence of an allegation that Arshi himself was properly licensed. As the court later pointed out following trial on the cross-complaint, section 7028.5 (quoted above) would still have required Arshi to hold a license in good standing.

Any conceivable error in ruling on the demurrer unquestionably was rendered harmless by the trial that followed on the cross-complaint. The central issue with respect to both the first amended complaint and the cross-complaint was whether Arshi, who admittedly did not hold a contractor’s license, was required to be licensed to perform his work on the Buckhorn residence and to receive compensation for the work that he performed. Arshi has not included in the record on appeal a transcript of the trial testimony, so that there is no basis to question any of the findings included in the statement of decision. (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 633; *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.) The findings make clear there was no partnership between Arshi and Pirzadeh, and no basis for any exemption relieving Arshi of the need for a contractor’s license. Because Arshi was not licensed, he was properly required to reimburse Pirzadeh for the payments he made for performing that work. Section 7031, subdivision (b) provides: “Except as provided in subdivision (e) [which is inapplicable], 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 at all times during the performance of the act or contract.” “[S]ection 7031(b) was designed to treat persons who have utilized unlicensed contractors consistently, regardless of whether they have paid the contractor for the unlicensed work. In short, those who have not are protected

from being sued for payment and those who have paid may recover all compensation delivered.’ ” (*Alatriste v. Cesar’s Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 666.) The findings made in ruling on the cross-complaint thus also conclusively establish that Arshi was not entitled to recover on his first amended complaint.

Finally, Arshi asserts that “[t]he law of disgorgement is arguably unconstitutional, or at least should be interpreted through a narrower lens.” He states that although he “was never a personally licensed contractor, [he] was an individual, a friend and business partner, who sought only to help a long-time associate construct a house. [¶] No good deed goes unrewarded. Arshi’s extraordinary generosity only led to his impoverishment—a capricious, arbitrary, and draconian consequence of the good deeds of an elderly man.” The court’s findings hardly support this characterization, but to whatever extent Arshi’s despair may be justified, the severe consequences of the Contractors’ State License Law have repeatedly been acknowledged and the validity of the statute upheld. “The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] . . . [¶] . . . [¶] Because of the strength and clarity of this policy, it is well settled that section 7031 applies despite injustice to the unlicensed contractor. ‘Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state.’ ” (*Hydrotech Systems, Ltd. v. Oasis Waterpark, supra*, 52 Cal.App.3d at p. 995.)

### **Disposition**

The judgments are affirmed.

---

Pollak, J.

We concur:

---

McGuinness, P. J.

---

Siggins, J.