

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION THREE

CITY OF CALABASAS et al. ex rel.  
BRENT CARPENTER,

Plaintiff and Appellant,

v.

BERNARDS BROS., INC., et al.,

Defendants and Respondents.

B234205

(Los Angeles County  
Super. Ct. No. BC426514)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Malcolm H. Mackey, Judge. Affirmed in part, and reversed in part with directions.

Negele & Associates, James R. Negele and Jonathan R. Hickman for Plaintiff  
and Appellant.

Law Offices of Ted R. Gropman and Ted R. Gropman for Defendant and  
Respondent Bernard Bros. Inc.

Stroock & Stroock & Lavan, Stephen J. Newman, Lucas A. Messenger;  
Van Cott, Bagley, Cornwall & McCarthy and Stephen K. Christiansen for Defendants  
and Respondents Wayne Gary Sandberg, Sr., and BDL Architectural Corp.

---

---

Brent Carpenter appeals a judgment dismissing his complaint against a general contractor, Bernards Bros. Inc. (Bernards), and others after the sustaining of a demurrer without leave to amend. He contends he has adequately alleged a violation of the California False Claims Act (Gov. Code, § 12650 et seq.) by each defendant. We conclude that, to the extent that his complaint is based on alleged misrepresentations concerning which entity would perform or had performed work on the project and the lack of a contractor's license, Carpenter fails to allege a material falsity as necessary to support a cause of action. We also conclude, however, that Carpenter adequately alleges that Bernards violated the act by submitting false claims for payment for deficient work. We therefore will reverse the judgment in favor of Bernards and affirm the judgment in favor of the other defendants.

***FACTUAL AND PROCEDURAL BACKGROUND***

1. *Calabasas City Center Project*

The City of Calabasas (city) was the owner of a public works project known as the Calabasas Civic Center. The project was funded in part by a grant from the State of California. The city selected Bernards as the general contractor for the project through a public bidding process. Valley Planing Mill initially was a subcontractor on the project for millwork. Carpenter was president of Valley Planing Mill, which commenced work on the project in January 2007.

Bernards later sought permission to substitute another subcontractor, BDL Architectural Millwork, for Valley Planing Mill. The city conducted a hearing in January 2008 to consider the request. Bernards submitted a proposed contract signed by

Wayne Gary Sandberg, Jr., as Executive Vice-president of BDL Architectural Millwork. The proposed contract stated that BDL Architectural Millwork was a corporation and that its contractor's license number was 889293. But, in fact, BDL Architectural Millwork was Sandberg's sole proprietorship. The city approved the request for substitution.

## 2. *Prior Litigation*

Valley Planing Mill filed a complaint against Bernards, the city and others in December 2008 seeking payment for work and materials provided for the project. Valley Planing Mill filed a first amended complaint in April 2009 naming BDL Architectural Millwork as a defendant, alleging counts against it for reasonable value, deceit, negligent misrepresentation and intentional interference with contractual relations.

BDL Architectural Corp. filed an answer stating that it had been misidentified in the complaint as BDL Architectural Millwork. Upon investigating the license history of the two BDL entities, Carpenter learned from the Contractors State License Board that license number 889293 had been issued to Sandberg as a sole proprietor doing business as BDL Architectural Millwork and that the license was suspended from June 11, 2007, through April 14, 2008. He also learned that BDL Architectural Corp. was not licensed as a contractor in this state during the period from September 1, 2005, to September 1, 2008.

3. *Original Complaint in the Present Action*

Carpenter filed a complaint against Bernards, BDL Architectural Millwork and BDL Architectural Corp. in November 2009 under the California False Claims Act (Gov. Code, § 12650 et seq.).<sup>1</sup> He filed the complaint as a qui tam plaintiff in the name of the city and the State of California.

Carpenter alleged that Bernards sought to replace Valley Planing Mill as a subcontractor on the project after he notified Bernards that other subcontractors had performed work that did not comply with the specifications. Carpenter alleged that the defendants failed to inform the city that BDL Architectural Millwork's contractor's license was suspended at the time of the substitution hearing or that the work would be performed by BDL Architectural Corp., which had never held a contractor's license in California. He alleged that neither of the BDL entities was properly licensed to do the work. Carpenter alleged that all of the defendants had violated the California False Claims Act by submitting false claims for payment by the city, using false records to obtain the city's approval of false claims and conspiring to violate the act.

The Attorney General declined to intervene in the action. All of the defendants demurred to the complaint.

---

<sup>1</sup> BDL Architectural Millwork is a sole proprietorship. A sole proprietorship is not a legal entity (*Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694, 601) and therefore cannot be a party to litigation. Instead, the true party is Sandberg as its owner.

4. *First Amended Complaint*

Carpenter filed a first amended complaint in January 2011, before the hearing on the demurrers, adding Sandberg as a defendant. He again alleges that Bernards sought to replace Valley Planing Mill as a subcontractor on the project after he had notified Bernards of nonconforming work by other subcontractors. He alleges that BDL Architectural Millwork's contractor's license was suspended at the time of the substitution hearing and at the time that it signed the contract to work on the project. He also alleges that BDL Architectural Corp. was never a licensed contractor in this state.

Carpenter alleges further, on information and belief, that the two BDL entities are actually the same company, that BDL Architectural Millwork is a fictitious business name used by BDL Architectural Corp. and that BDL Architectural Corp. actually performed the work on the project wrongfully using the name and license number of BDL Architectural Millwork. He alleges that neither of the BDL entities was properly licensed to do the work at the time.

Carpenter alleges a single count against all defendants for violation of the California False Claims Act. He alleges that Bernards represented to the city that BDL Architectural Millwork was a licensed contractor and would work on the project and submitted claims to the city stating that BDL Architectural Millwork had performed work on the project, while knowing that BDL Architectural Corp. would perform the work and had actually performed the work and that BDL Architectural Corp. was not a licensed contractor. He alleges that the other defendants knowingly made some of the same misrepresentations to the city. He also alleges that Bernards knew that some of

the work performed on the project by other subcontractors did not comply with the specifications and submitted false claims for payment for such work.

5. *Demurrers, Denial of Motion for Reconsideration and Judgment*

Bernards filed a general demurrer to the complaint and a special demurrer on the grounds of uncertainty. The other defendants jointly filed a general demurrer. The defendants requested judicial notice of certain documents, as did Carpenter. The trial court took judicial notice of certain documents.

The trial court concluded that the complaint was based on an alleged violation of the contractor's license law and stated that the California False Claims Act provides no remedy for such a violation, citing *U.S. ex rel. Hopper v. Anton* (9th Cir. 1996) 91 F.3d 1261, 1266, and other opinions applying the federal False Claims Act (31 U.S.C. § 3730 et seq.). The court also stated that Carpenter had failed to allege that possession of a valid contractor's license was required under the terms of the building contract. The court therefore sustained the general demurrers in favor of all defendants without leave to amend. The court did not state the reasons for sustaining Bernards's demurrer with respect to the alleged false claims for payment for nonconforming work and did not expressly rule on Bernard's special demurrer.<sup>2</sup>

Carpenter filed a motion on May 23, 2011, for reconsideration of the ruling on the demurrers and presented a proposed second amended complaint alleging that

---

<sup>2</sup> A court sustaining a demurrer without leave to amend is required to state "the specific ground or grounds upon which the decision or order is based . . . ." (Code Civ. Proc., § 472d; see *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 111.)

compliance with the contractor's license law was required under both BDL Architectural Millwork's contract with Bernards and Bernards's contract with the city. The trial court entered a signed order of dismissal of the complaint as to all defendants on June 2, 2011, before the hearing on the motion for reconsideration. The court later heard the motion for reconsideration and denied the motion on the grounds that there were no new or different facts. Carpenter timely appealed the judgment.<sup>3</sup>

### *CONTENTIONS*

Carpenter contends he has adequately alleged that the defendants presented false claims in violation of the California False Claims Act based on their seeking payment for work performed without a contractor's license and, as to Bernards only, seeking payment for work that did not comply with the specifications. He also contends he is entitled to leave to amend his complaint to correct any pleading deficiency.

The defendants contend Carpenter has failed to allege a valid cause of action because (1) he alleges only a regulatory violation for which the California False Claims Act provides no remedy; (2) he fails to allege a false claim absent an allegation that licensure was an express contractual requirement; (3) this action is barred pursuant to Government Code section 12652, subdivision (d)(2) because the city was a party to a prior action involving the same allegations or transactions; (4) this action is barred pursuant to Government Code section 12652, subdivision (d)(3)(A) because it is based

---

<sup>3</sup> A signed order of dismissal is an appealable judgment. (Code Civ. Proc., § 581d.) An order denying a motion for reconsideration is not separately appealable, but is reviewable on appeal from an underlying appealable order. (*Id.*, § 1008, subd. (g).)

on matters that were publicly disclosed in the prior action and in the substitution hearing; (5) any license discrepancy was immaterial and provides no basis for this action; and (6) the allegations of nonconforming work are too vague. The defendants also contend the denial of leave to amend the complaint and denial of Carpenter's motion for reconsideration were proper.

### ***DISCUSSION***

#### 1. *Standard of Review*

A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the sustaining of a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We construe the pleading in a reasonable manner and read the allegations in context. (*Ibid.*) We must affirm the judgment if the sustaining of a general demurrer was proper on any of the grounds stated in the demurrer, regardless of the trial court's stated reasons. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.)

It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable probability that the defect can be cured by amendment. (*Schifando v. City of Los Angeles, supra*, 31 Cal.4th at p. 1082.) The burden is on the plaintiff to demonstrate how the complaint can be amended to state a valid cause of action. (*Ibid.*)

The plaintiff can make that showing for the first time on appeal. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386.)

2. *California False Claims Act*

The California False Claims Act states that any person who knowingly presents or causes to be presented a false or fraudulent claim to the state or a local government entity, or commits other specified acts, is liable for treble damages and civil penalties. (Gov. Code, § 12651, subd. (a).) A “claim” under the act means, in pertinent part, “any request or demand, whether under a contract or otherwise, for money, property, or services” presented to the state or a local government entity. (*Id.*, § 12650, subd. (b)(1).) A person acts “knowingly” with respect to particular information if he or she acts with actual knowledge of that information or acts either in deliberate ignorance or in reckless disregard of the truth or falsity of that information. (*Id.*, subd. (b)(3).)

The Attorney General or the prosecuting authority of a local government entity may sue to recover damages and civil penalties under the California False Claims Act. (Gov. Code, § 12652, subds. (a), (b).) The act also states that a “person,” known as a “qui tam” plaintiff, may sue in the name of the state or local government entity to enforce the act. (*Id.*, subd. (c)(1).) A successful qui tam plaintiff is entitled to a percentage of the monetary recovery in addition to attorney fees. (*Id.*, subd. (g)(2)-(8).) Thus, the act provides a financial incentive for private whistleblowers so as to supplement governmental efforts to identify violations and prosecute civil actions against wrongdoers. (*Rothschild v. Tyco Internat. (US), Inc.* (2000) 83 Cal.App.4th 488, 494-495.) The state or local government entity may intervene in an

action brought by a qui tam plaintiff and may assume control of the action. (Gov. Code, § 12652, subds. (c)(4)-(8), (e)(1).)

“California courts have consistently reaffirmed that the Legislature ‘obviously designed [the California False Claims Act] to prevent fraud on the public treasury,’ [citation], and that ‘[t]he ultimate purpose of the [act] is to protect the public fisc.’ [Citations.]” (*State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1296-1297.) Government Code section 12655, subdivision (c) states that the act “shall be liberally construed and applied to promote the public interest.” The California False Claims Act is patterned after the federal False Claims Act (31 U.S.C. § 3729 et seq.) as amended in 1986, so authorities applying the federal act may be persuasive in construing the California act to the extent that the language of the two acts is similar. (*State of California v. Altus Finance, supra*, at p. 1299; *Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 735.)

The same pleading specificity requirements applicable to a fraud cause of action also apply to a complaint alleging a false or fraudulent claim under the California False Claims Act. (*State of California ex rel. McCann v. Bank of America, N.A.* (2011) 191 Cal.App.4th 897, 906; *City of Pomona v. Superior Court* (2001) 89 Cal.App.4th 793, 803.) Fraud must be pleaded with specificity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action. General and conclusory allegations of fraud are insufficient. The plaintiff must allege the facts constituting the fraud and must allege

each element of the cause of action with specificity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

3. *Carpenter Fails to Allege a Material Falsity as to Representations Concerning Which BDL Entity Would Perform Work on the Project and the Lack of a Contractor's License*
  - a. *The Alleged Falsity Must Be Material*

Carpenter alleges a single count against all defendants for violation of the California False Claims Act based on knowingly presenting false claims and using false records in support of false claims. He alleges that the claims and records were false with respect to which of the BDL entities would perform work on the project and which of those entities had actually performed the work. He also alleges that Bernards, but not the other defendants, made false claims for payment for deficient work performed by other subcontractors.

The California False Claims Act, at the time of the events in this case, did not expressly state that a falsity must be material to be actionable. Government Code section 12651, former subdivision (a)(1) stated that a person who “[k]nowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval” was liable for treble damages and civil penalties. (Stats. 2007, ch. 577, § 5.) Former subdivision (a)(2) stated that a person who “[k]nowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political

subdivision” was liable for treble damages and civil penalties.<sup>4</sup> (Stats. 2007, ch. 577, § 5.) California courts, following federal opinions construing the federal False Claims Act, nonetheless have concluded that a materiality requirement is implicit in the California False Claims Act. (*San Francisco Unified School Dist. ex rel. Contreras v. Laidlaw Transit, Inc. (Laidlaw)* (2010) 182 Cal.App.4th 438, 454; *City of Pomona v. Superior Court, supra*, 89 Cal.App.4th at p. 802.) The courts have held that the applicable test for materiality under the California False Claims Act is whether the falsity has a natural tendency to influence the public entity’s payment decision or is capable of influencing that decision.<sup>5</sup> (*Laidlaw, supra*, 182 Cal.App.4th at p. 454; *City*

---

<sup>4</sup> Government Code section 12651, subdivision (a)(1) was amended in 2009, effective on January 1, 2010, to state that a person who “[k]nowingly makes, uses, or causes to made or used a false or fraudulent claim for payment or approval” is liable for treble damages and civil penalties. (Stats. 2009, ch. 277, § 2.) Subdivision (a)(2) was amended at that time to state that a person who “[k]nowingly makes, uses, or causes to made or used a false record or statement *material* to a false or fraudulent claim” (italics added) is liable for treble damages and civil penalties. (Stats. 2009, ch. 277, § 2.) The Legislature also amended Government Code section 12650 at that time by adding a definition of “material.” (Stats. 2009, ch 277, § 1.) Government Code section 12650, subdivision (b)(4) now states that, for purposes of the California False Claims Act, “ ‘[m]aterial’ means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money, property, or services.” (Gov. Code, § 12650, subd. (b)(4).)

<sup>5</sup> Government Code section 12651, subdivision (a)(2), as amended in 2009, now includes an express materiality requirement. The Legislature, however, has not added the word “material” to the provision describing false or fraudulent claims in Government Code section 12651, subdivision (a)(1). *Laidlaw, supra*, 182 Cal.App.4th at pages 454-455, footnote 14, concluded that the Legislature’s failure to expressly impose a materiality requirement in this regard did not undermine the judicial construction of the statute imposing such a requirement. We agree.

*of Pomona, supra*, 89 Cal.App.4th at p. 802.) We agree and conclude that the same test applies in this case.

b. *BDL Architectural Millwork Was a Licensed Contractor, but BDL Architectural Corp. Was Not*

Carpenter alleges that BDL Architectural Millwork and BDL Architectural Corp. are two names for the same company and that BDL Architectural Millwork is a fictitious business name used by BDL Architectural Corp. The defendants requested judicial notice in the trial court of two verified certificates issued by the Contractors State License Board. The certificates state that license No. 889293 was issued on January 10, 2007, to Sandberg as the sole owner of BDL Architectural Millwork in the C-6 classification for cabinet, millwork and finish carpentry, and that the license expired on January 31, 2009, and was renewed on June 1, 2009. The certificates also state that the same license was reassigned to BDL Architectural Corp. on April 15, 2010.<sup>6</sup> A verified certificate of licensure from the Contractors State License Board stating that the licensee was duly licensed in a particular classification during a specified period of time constitutes proof of such licensure. (Bus. & Prof. Code, § 7031, subd. (d).)

Carpenter requested judicial notice in the trial court of a Notice of License Suspension dated June 11, 2007, and a Notice of License Reinstatement dated April 14, 2008, both issued by the Contractors State License Board. The first notice stated that

---

<sup>6</sup> The trial court took judicial notice of the certificate of licensure dated December 16, 2009, but did not expressly rule on the request for judicial notice of the certificate dated July 27, 2010. We judicially notice both certificates. (Evid. Code, §§ 452, subd. (c) & 459, subd. (a).)

the license issued to Sandberg as the sole owner of BDL Architectural Millwork was suspended effective on June 6, 2007, for failure to provide proof of either workers' compensation insurance or an exemption. The second notice stated that proof of workers' compensation insurance had been received and that the prior suspension was lifted effective on May 1, 2007.<sup>7</sup> These two notices together with the certificates of licensure discussed above indicate that the temporary suspension was vacated retroactively, with the result that BDL Architectural Millwork was licensed throughout the period from January 10, 2007, to January 31, 2009. We therefore conclude, contrary to the allegation in Carpenter's complaint, that BDL Architectural Millwork was a licensed contractor from January 10, 2007, through January 31, 2009. Carpenter's allegation that BDL Architectural Corp. was not a licensed contractor during that time period, however, is consistent with the certificates of licensure.

c. *The Contractor's License Law Precludes the Recovery of Compensation by an Unlicensed Contractor*

Business and Professions Code section 7031, subdivision (a) generally precludes an unlicensed contractor from recovering compensation for work performed requiring a license. "The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local

---

<sup>7</sup> The trial court took judicial notice of the two notices, and so do we. (Evid. Code, § 459, subd. (a).)

laws and codes, and know the rudiments of administering a contracting business.

[Citation.] [¶] [Business and Professions Code] [s]ection 7031 advances this purpose by withholding judicial aid from those who seek compensation for unlicensed contract work. The obvious statutory intent is to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay.

“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. [Citation.] . . . ’ [Citations.]” (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; accord, *MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423.)

California courts have recognized that the distinction between a corporation and an individual is significant for purposes of the contractor’s license law. The plaintiff in *Opp v. St. Paul Fire & Marine Ins. Co.* (2007) 154 Cal.App.4th 71 (*Opp*) signed a building contract as president of a corporation and misrepresented his own contractor’s license number as that of the corporation. The corporation, in fact, was unlicensed. The president sued a surety on a payment bond to recover compensation for work performed, alleging that he was the real contracting party and that he had used the corporate name as a fictitious business name. (*Id.* at pp. 72-73.) The trial court

concluded that the corporation was the contracting party, that the president was not a party to the contract and that Business and Professions Code section 7031 precluded any recovery in favor of the corporation as an unlicensed contractor. The court therefore granted summary judgment in favor of the surety. (*Id.* at p. 73.)

The Court of Appeal affirmed stating that undisputed evidence showed that the corporation, rather than its president, was the contracting party. The court therefore concluded that the corporation had acted as a contractor without a license, regardless of who actually did the work. (*Opp, supra*, 154 Cal.App.4th at p. 75.) The court rejected the plaintiff's argument that a triable issue of fact existed as to whether, despite the fact that the contract was in the name of the corporation, the plaintiff individually was also a party to the contract. *Opp* stated that to recognize the individual as a contracting party in those circumstances would, among other things, encourage fraud through the misuse of another person's contractor's license number and allow an individual to enjoy the benefits of incorporation while avoiding the burdens by effectively repudiating the existence of the corporation when it was convenient to do so. (*Id.* at p. 76.)

*WSS Industrial Construction, Inc. v. Great West Contractors, Inc.* (2008) 162 Cal.App.4th 581 (*WSS*) involved a suit by a subcontractor against a general contractor. The subcontractor, a corporation, did not hold a contractor's license, but its president was a licensed contractor at all times during the performance of work. The trial court concluded that the subcontractor had substantially complied with the license requirement and therefore denied the defendant's nonsuit motion. (*Id.* at pp. 585-586.) The Court of Appeal reversed, holding that the corporation could not recover any

compensation for the work performed because it was not a licensed contractor at the time of the performance of work, and stating that the president's individual license was irrelevant. (*Id.* at pp. 591, 594 & fn. 8.) WSS concluded that the corporation had failed to satisfy the statutory requirements for substantial compliance (see Bus. & Prof. Code, § 7031, subd. (e)) and therefore was entitled to no recovery. (WSS, *supra*, at pp. 595-596.)

d. *Carpenter Fails to Allege a Material Falsity*

Carpenter alleges that Bernards represented to the city that BDL Architectural Millwork would work on the project and later, in submitting claims for payment to the city, represented that BDL Architectural Millwork had performed work on the project. He alleges that those representations were knowingly false because Bernards and the other defendants knew that BDL Architectural Corp., rather than BDL Architectural Millwork, would do the work and knew that BDL Architectural Corp. had actually performed the work. According to Carpenter, the alleged falsity was material because both BDL entities were unlicensed and an unlicensed contractor is entitled to no compensation for work performed for which a license is required.

We have already dispensed with the allegation that BDL Architectural Millwork was an unlicensed contractor. The judicially noticed documents show that BDL Architectural Millwork was a licensed contractor from January 10, 2007, until

January 31, 2009.<sup>8</sup> Thus, unlike the situation in *Opp, supra*, 154 Cal.App.4th 71, and *WSS, supra*, 162 Cal.App.4th 581, the contracting party here was a licensed contractor using its own valid license number.

As for the allegations that, contrary to the representations made to the city, the defendants knew that BDL Architectural Corp. rather than BDL Architectural Millwork would do the work and later knew that BDL Architectural Corp. rather than BDL Architectural Millwork had actually performed the work, these allegations are inconsistent with the allegation that the two BDL entities were effectively the same company. Carpenter fails to explain how, if the two BDL entities shared the same workforce, BDL Architectural Corp. performed the work but BDL Architectural Millwork did not. He also fails to explain the significance in these circumstances of the legal distinction between the two entities when BDL Architectural Millwork, as the contracting party and the party in whose name the requests for payment allegedly were made, was duly licensed throughout the period of contract performance. In short, he fails to allege a material falsity in this regard.

We conclude that Carpenter has shown no error in the sustaining of the demurrers to the extent that the complaint is based on alleged misrepresentations concerning which entity would perform or had performed the work and the lack of a contractor's license. Because this is the sole basis for his complaint against BDL

---

<sup>8</sup> Carpenter alleges that the city approved the substitution of BDL Architectural Millwork as a subcontractor on January 28, 2008, and does not allege that its work continued after January 31, 2009.

Architectural Corp. and Sandberg, the sustaining of the demurrer by those defendants was proper.<sup>9</sup>

4. *Carpenter Adequately Alleges False Claims Based on Deficient Work*

Carpenter alleges that Bernards violated the California False Claims Act based not only on misrepresentations concerning which BDL entity would perform work on the project and the lack of a contractor's license, but also based on submitting false claims for payment for deficient work. Because a demurrer must dispose of an entire cause of action to be sustained (*Fremont Indemnity Co. v. Fremont General Corp.*, *supra*, 148 Cal.App.4th at p. 119), we must decide whether the allegations of false claims for payment for deficient work are sufficient to support the complaint against Bernards.

Carpenter alleges that he personally observed areas around exterior windows that were not being framed in accordance with the contract specifications. He alleges that he brought the nonconforming work to Bernards's attention and also advised Bernards that "specifications regarding wood and wood related materials [] were changing and/or were not being equally applied across the Project to all subcontractors . . . ." He alleges that Bernards knew that work was being performed on the project that did not comply with the specifications, or acted in deliberate indifference or reckless disregard of that

---

<sup>9</sup> Carpenter acknowledges that his request for leave to amend the complaint is limited to the facts alleged in his proposed second amended complaint, which alleges no additional facts concerning the materiality of the alleged misrepresentations. We therefore conclude that he is not entitled to a reversal on this basis.

fact. He alleges that Bernards submitted payment requests to the city for such nonconforming work and that the city had no knowledge of the true facts.

Bernards argued in its demurrer that these allegations were uncertain and lacked the specificity required in an action based on fraud. The trial court sustained the demurrer to the first amended complaint without leave to amend without commenting on that argument and without expressly ruling on the special demurrer. Carpenter contends he has adequately alleged that Bernards made false claims for payment for nonconforming work.

We cannot affirm the sustaining of the demurrer based on the special grounds of uncertainty. In light of the trial court's failure to expressly rule on the special demurrer, we must presume that the court did not rule on those grounds and therefore cannot affirm the judgment on those grounds. (*Briscoe v. Reader's Digest Association, Inc.* (1971) 4 Cal.3d 529, 544, overruled on another point in *Gates v. Discovery Communications, Inc.* (2004) 34 Cal.4th 679, 685, 697, fn. 9; see *E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 504, fn. 1.) To the extent that the trial court's ruling was based on the general grounds of failure to state facts sufficient to constitute a cause of action, we conclude that Carpenter adequately alleges the facts referenced above with sufficient specificity to inform both Bernards and the court of the factual basis for the cause of action. We therefore conclude that the sustaining of Bernards's demurrer was error unless there is some other reason to conclude that the action is barred.

Bernards's argument in the trial court and on appeal that this action is barred pursuant to Government Code section 12625, subdivision (d)(2) and (3)(A) addresses only the allegations of misrepresentations concerning which of the two BDL entities would perform and actually performed the work and the lack of a contractor's license. Bernards does not argue that those statutory provisions bar this action to the extent that it is based on alleged false claims for payment for nonconforming work, and our review of the record indicates that neither of those provisions would justify the sustaining of the demurrer with respect to those allegations.<sup>10</sup> Absent any other asserted grounds to justify the sustaining of the demurrer to the entire cause of action against Bernards, we conclude that the sustaining of the demurrer was error and will reverse the judgment in favor of Bernards.

---

<sup>10</sup> Government Code section 12652, subdivision (d)(2) states that a qui tam plaintiff may not bring an action under the California False Claims Act "that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party." Subdivision (d)(3)(A) states that a court has no jurisdiction over an action by a qui tam plaintiff "based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing . . . ," unless the plaintiff "is an original source of the information." There is no indication here that the particular allegations or transactions on which this action is based with respect to the alleged nonconforming work were the subject of any prior civil action or were disclosed in any prior criminal, civil, or administrative hearing so as to put the city on notice of the alleged fraud. (See *State of California v. Pacific Bell Telephone Co.* (2006) 142 Cal.App.4th 741, 750-755; *U.S. ex rel. Springfield Terminal Ry. v. Quinn* (D.C. Cir. 1994) 14 F.3d 645, 653-656.)

***DISPOSITION***

The judgment in favor of Bernards is reversed with directions to vacate the order sustaining the general demurrer by Bernards and enter a new order overruling that demurrer. The judgment in favor of BDL Architectural Corp. and Sandberg is affirmed. Carpenter is entitled to recover his costs on appeal as against Bernards, and BDL Architectural Corp. and Sandberg are entitled to recover their costs on appeal as against Carpenter.

***NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS***

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.