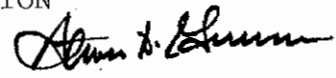


1 DISTRICT COURT, CIVIL DIVISION

2 CLARK COUNTY, NEVADA



CLERK OF THE COURT

3 * * * *

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5 INNOVATIVE HOME SYSTEMS LLC,)

6 Plaintiff,)

7 vs.)

8 TIMOTHY TOM,)

9 Defendant.)

Case No. A-13-680766-C
Dept. XIV

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11
12 REPORTER'S TRANSCRIPT
OF

13 MOTION TO DISMISS/OPPOSITION TO MOTION TO DISMISS

14 BEFORE THE HONORABLE JAMES A. BRENNAN

15 SENIOR JUDGE

16 Taken on Thursday, July 25, 2013

17 At 9:30 a.m.

18
19
20 APPEARANCES:

21 For the Plaintiff: LEON F. MEAD II, ESQ.

22 For the Defendant: GEORGE E. ROBINSON, ESQ.

23
24
25 Reported by: Maureen Schorn, CCR No. 496, RPR

MAUREEN SCHORN, CCR NO. 496, RPR

1 LAS VEGAS, NEVADA. THURSDAY, JULY 25, 2013, 9:30 A.M.

2 * * * *

3

4 THE COURT: A680766, Innovative Home Systems
5 versus Timothy Tom.

6 MR. MEAD: Good morning, Your Honor. Leon
7 Mead, Snell and Wilmer, for Innovative Home Systems.

8 MR. ROBINSON: Good morning, Judge. George
9 Robinson for Timothy Tom.

10 THE COURT: And this is a Motion to Dismiss
11 Complaint or, in the alternative, Motion for Summary
12 Judgment; is that correct?

13 MR. ROBINSON: That's correct, Your Honor.

14 THE COURT: Anything further that either one
15 of you have to say?

16 MR. ROBINSON: Your Honor, I would like to
17 comment on Innovative Home Systems reply brief to their
18 Countermotion for Summary Judgment, which includes
19 argument that I would say is a reply to my reply brief in
20 terms of the licensing requirement, and I think that the
21 Court should not take that into consideration.

22 I'm sorry, Judge, I just walked into the door, if
23 I could have a Court's indulgence?

24 THE COURT: What are you asking for at this
25 time, counsel?

1 MR. ROBINSON: I'm asking for either the
2 Complaint to be dismissed because the Plaintiff was
3 unlicensed at the time that they bid, they contracted for
4 and did the vast majority of the work on the job, because
5 that was not part of the initial pleading.

6 Or that summary judgment be granted against the
7 Plaintiff for that same reason, Your Honor.

8 THE COURT: They weren't licensed at the
9 time of the bid, they were they weren't licensed at the
10 time of the performance; is that correct?

11 MR. ROBINSON: That's correct, Your Honor.

12 MR. MEAD: That's not our position, Your
13 Honor, but I'll explain to you after he's finished.

14 THE COURT: This is your motion then, right?

15 MR. ROBINSON: This is my motion, yes.

16 MR. MEAD: There's actually -- Your Honor,
17 there's a countermotion for summary judgment as well.

18 THE COURT: Didn't Judge Escobar rule on one
19 side of this matter on the case?

20 Hasn't she ruled on part of this case?

21 MR. MEAD: No, Your Honor. This is the
22 first motion that's been heard and the first hearing. If
23 she's ruled summarily, we haven't seen any order, at least
24 I haven't.

25 MR. ROBINSON: No, Your Honor. This is the

1 first appearance in the case in this courtroom. In the
2 reply to the opposition to the countermotion, IHS states,
3 "When a statute directly applies to a case, the Court
4 cannot look to other cases, but must first apply the plain
5 meaning of the statute as written."

6 Well, the statute in question here, Your Honor,
7 is NRS 624 3.20, which specifically says that a contractor
8 cannot prosecute an action unless he is duly licensed at
9 all times during the performance of such act or contract,
10 and when the job was bid.

11 Your Honor, I think that that's very clear that
12 they were not licensed at all times. I think it's clear
13 that the administrative code --

14 THE COURT: I'm sorry. Are you representing
15 the Plaintiff or the Defendant?

16 MR. MEAD: I'm representing the Plaintiff,
17 Innovative Home Systems, Your Honor.

18 THE COURT: And it's your Motion to Dismiss
19 the Complaint, or for summary judgment?

20 MR. MEAD: No, Your Honor. That's Timothy
21 Tom's Motion to Dismiss or for summary judgment for
22 alleging that my client needed a contractor's license at
23 all times to perform this work, and that they didn't have
24 one so, therefore, he didn't.

25 THE COURT: All right. But the first matter

1 on is the Defendant's motion, is it not?

2 MR. ROBINSON: Yes.

3 THE COURT: Take it then from there, please?

4 MR. ROBINSON: I was just citing to that,
5 Your Honor, because I believe it acts like a reply to my
6 reply. So Innovative Home Systems needed to be licensed
7 at all times pursuant to NRS 624 in order to now prosecute
8 an action against Tom for the breach of contract, and for
9 the mechanics lien.

10 They clearly were not licensed at the time of
11 bid, at the time of contracting, and a majority of the
12 time when work was performed.

13 Now they are licensed, which I believe acts
14 almost like an admission that they needed to be licensed
15 the entire time. But they were contracting without a
16 license for I believe approximately eight years prior. So
17 there were a lot of people who had work done without a
18 license.

19 In the opposition --

20 THE COURT: Was any other work done during
21 the period of time that they were licensed at all, or had
22 it been completed?

23 MR. ROBINSON: They did do some work, yes, I
24 believe.

25 THE COURT: Without licensing?

1 MR. ROBINSON: Yes. The contract was
2 entered into in April, and they became licensed I believe
3 in September. So there was that five-month period where
4 they were not licensed, and then they did do some work
5 after the license was received.

6 THE COURT: Was it an extra, or was it part
7 of the original bid?

8 MR. ROBINSON: There definitely was -- we
9 filed a complaint with the Board after we couldn't resolve
10 the situation, because we felt that the work was
11 incomplete.

12 Pursuant to the contract, the contract stated
13 that IHS was not entitled to a final payment in the case
14 prior to the work being completed, and that's what they're
15 suing for now.

16 So we told IHS the work was not completed. They
17 did not want to come out and finish the work, so we went
18 to the Contractors Board and filed a Complaint. Now,
19 clearly --

20 THE COURT: Then what happened after you
21 filed the Complaint?

22 MR. ROBINSON: And then the Contractors
23 Board investigator came out and looked at it and issued a
24 Notice to Correct. And so they did come out and correct
25 some of the issues.

1 But the investigator said that -- well, told a
2 colleague of mine who was there, said that a lot of these
3 other programming issues are in dispute, so you'll have to
4 go to Court over that.

5 MR. MEAD: I'm going to object to that, Your
6 Honor. There's no evidence of that whatsoever. It
7 shouldn't even have been brought up.

8 MR. ROBINSON: Well, there's no evidence to
9 any of the things that IHS brings up in terms of their
10 citing to admit the --

11 THE COURT: I'm trying to find out about
12 the -- they weren't licensed at the time of the bid,
13 right?

14 MR. ROBINSON: That's right.

15 THE COURT: They weren't licensed during
16 part of the installation and work and materials, right?

17 MR. ROBINSON: That's correct.

18 THE COURT: Then they got a license,
19 correct?

20 MR. ROBINSON: That's right.

21 THE COURT: Were there scope changes or
22 extras after they were licensed?

23 MR. ROBINSON: No, not to my knowledge, your
24 Honor. The project was nearly complete, and then --

25 THE COURT: Everything that was in the bid

1 was included in the work that they did, and they didn't do
2 anything extra other than --

3 MR. ROBINSON: No. There were no changes or
4 anything like that after the license, to my knowledge
5 that.

6 THE COURT: Okay. Thank you. Go ahead?

7 MR. MEAD: Your Honor, there's a big basic
8 question. First of all, this is just about somebody
9 trying to get away with a \$25,000 discount for work that
10 he's enjoying. That's what this is about. It's not ever
11 about somebody performing unlicensed work.

12 As a matter of fact, this work, they say that the
13 statute says if you're unlicensed you can't record. What
14 it actually says is, if you are performing work for which
15 a license is needed by 624, and in this case it's not.

16 The very fact of the matter is, Your Honor, my
17 client supplies essentially what are appliances,
18 essentially that. (Counsel held up piece of equipment)
19 That's a component piece like was installed in this
20 gentleman's place.

21 It's got a plug, it plugs in and it controls,
22 interestingly enough, temperature, lights, all kinds of
23 functions in a house computerized wirelessly.

24 All my client does is go in, remove things that
25 are already in the house, put in new components and go

1 forward. They've never needed a contractor's license for
2 it at any time, and the Contractors Board confirmed that.

3 They filed a complaint against my client for not
4 completing the work, among other things, if you look at
5 Exhibit 13 to our opposition, among other things, that
6 they started work without being licensed. So they raised
7 the issue in front of the Contractors Board.

8 The Contractors Board came out -- oh, and, by the
9 way, if you took a look at Exhibit 13, which is
10 interesting, right on the very form on the second page on
11 the very form on the bottom by signatures, it says Item B:
12 "Nevada State Contractors Board cannot direct a
13 nonlicensed contractor to complete or correct a project."

14 So the Contractors Board looked at that, said
15 it's irrelevant. When I looked at nine workmanship issues
16 that were allegedly there --

17 THE COURT: That doesn't mean a license
18 isn't required. It doesn't require someone that doesn't
19 have a license to do something, does it? But you still
20 have the statute that says that you can't maintain an
21 action for compensation if you're not licensed at the time
22 of the bid or the work if you needed a license.

23 MR. MEAD: If you needed a license, and we
24 don't, okay. This clearly falls --

25 THE COURT: Wait. Your position is then

1 that you don't need a license for the contract or
2 installation of thermostats, audio speakers, irrigation
3 controls, landscape lighting, automated pool controller,
4 surveillance equipment. You don't need a license for any
5 of that. That's your position?

6 MR. MEAD: Not in this context. What that's
7 talking about in NAC 2.4200 is the actual new installation
8 of all that, wires, all the things that go through their
9 units.

10 All my client does is, he goes in and he takes
11 out what's already there put in by a different contractor,
12 and replace it with a different component and then program
13 it. It's appliances, it doesn't need a contractor's
14 license.

15 It clearly falls within the exceptions of the
16 contractor's licensing law under 624.031, 5, 6 and 7;
17 doesn't need it. That's why the Contractors Board didn't
18 stop them from doing the work.

19 The Contractors Board under 624.212 clearly
20 states that they have to direct an unlicensed contractor
21 who is performing, commencing work or bidding on work --

22 THE COURT: Wait.

23 MR. MEAD: -- and you have to tell them to
24 stop.

25 THE COURT: Are you saying that after a

1 period of time before the work was complete they decided
2 to get a license, even though they didn't need it?

3 MR. MEAD: They got it for a different
4 reason. They got it because they got involved with other
5 contractors who wanted them to actually do a new install
6 of everything that goes into it, not just replace the
7 component part. So that's why they got the license.

8 We that's what we've laid out in the Affidavit of
9 Mr. Brown that clearly shows that. They didn't get a
10 license because they suddenly needed it with Mr. Timothy
11 Tom. They never raised that, that was never an issue, and
12 it's still not an issue.

13 They don't need a Contractors License to perform
14 this work, or to enter into the contract, okay. Nor do
15 they need one to maintain a mechanic's lien. The
16 Contractors Board saw that issue. They need a
17 determination that it wasn't necessary.

18 THE COURT: Where do we have something to
19 support what you say about from the Contractors Board?

20 MR. MEAD: Our Exhibit 13.

21 THE COURT: Let me look at 13.

22 MR. MEAD: 13 is the Complaint.

23 MR. ROBINSON: We don't have anything, Your
24 Honor.

25 MR. MEAD: May I finish, Your Honor?

1 THE COURT: Sure. Go ahead.

2 MR. MEAD: Exhibit 14, which is our
3 response; Exhibit 15, which is the Contractors Board
4 confirmation of what is a legitimate complaint; and,
5 Exhibit 16, where the Contractors Board determines that
6 those were legitimate complaints have been resolved and
7 there's no further action, and dismissing the Complaint.

8 Now, I submit to you, Your Honor, if they claim
9 that my contractor is unlicensed at the time he begins the
10 work, they're required under 624.212 to order him to stop
11 doing work.

12 And Nevada State law, the Day case which we cite
13 clearly states that an owner cannot assert the defense of
14 624.320 when he confirms the contract, takes advantage of
15 the contract, and then turns around and claims that it's
16 void.

17 He moved to enforce the contract by his actions
18 in front of the Contractors Board. He got the stuff
19 fixed. He knew, apparently, at that point he can't do
20 this. It's outright trying to steal then, quite frankly.

21 THE COURT: That's a legal question, is it
22 not, whether or not when someone didn't perform then
23 installed, or whatever his client did, was required to
24 have a Contractor's License and the bond that goes along
25 with it? Isn't that the issue?

1 MR. ROBINSON: Yes, absolutely. That's the
2 issue. That is really --

3 THE COURT: That's a legal question.

4 MR. ROBINSON: -- the only issue, yes.

5 THE COURT: And so, consequently, what do I
6 have now to say whose right and whose wrong with the
7 Contractors Board?

8 MR. MEAD: So I told you, Your Honor. And
9 in those cases, put that before you, the Court has to give
10 great deference to the Contractors Board determination.
11 Their only option at that point, once the Contractors
12 Board made a determination --

13 THE COURT: Did anybody get an affidavit
14 from the Contractors Board?

15 MR. MEAD: Oh, no.

16 MR. ROBINSON: There is no determination
17 from the Contractors Board, Your Honor. There's a letter
18 from an investigator that says: Oh, yeah, the Complaint
19 is resolved.

20 The Contractors Board never heard anything. The
21 things that he's citing to you has to do with --

22 THE COURT: The Complaint is resolved. Now,
23 what does that tell me?

24 MR. ROBINSON: It tells you absolutely
25 nothing.

1 THE COURT: You're right.

2 MR. ROBINSON: It doesn't tell you that
3 there was a licensing issue. It doesn't say: Oh, we've
4 determined that you didn't need a license for the work to
5 be done.

6 And all of this argument about 624.212 about
7 directing an unlicensed contractor, I mean, this situation
8 is unique because they got a license. They had a license
9 by the time we filed the Complaint, so what were they
10 going to direct them to do?

11 THE COURT: Did they need one at the time
12 that they made the bid and commence the work, and
13 apparently finished up most of it. Did they need a
14 license is the whole issue.

15 MR. MEAD: That's pure supposition, Your
16 Honor.

17 MR. ROBINSON: Absolutely they did.

18 MR. MEAD: Pure supposition. That isn't
19 true. They never have needed a Contractors License since
20 they fell clearly within the exception.

21 THE COURT: Well, you people are arguing
22 something to me, basically, and I want to know what the
23 Contractors Board's interpretation of the work done,
24 whether or not there was a license required at the time of
25 the bid and at the time of the work.

1 That's what we need, and you're not going to be
2 able to tell me that, and neither are you, and I'm not
3 either.

4 MR. MEAD: Well, I mean --

5 MR. ROBINSON: I believe the law tells you
6 that, Your Honor. I mean, the law specifically says you
7 need as license to do this type of work, and they did that
8 type of work and then, you know, they didn't have a
9 license.

10 THE COURT: And the Contractors Board is
11 well aware of when there's construction or enhancement of
12 property or whatever that requires a license and a bond.
13 They're the ones that are going to make that
14 determination.

15 MR. MEAD: Right.

16 MR. ROBINSON: And, Your Honor, we filed
17 that Complaint before them. They rejected --

18 THE COURT: It will stand submitted,
19 counsel, because we're not going anywhere with it.

20 MR. MEAD: Thank you, Your Honor.

21 THE COURT: I just think there's a legal
22 issue here, and I'm not too sure I have enough information
23 in front of me to decide. It will stand submitted until I
24 figure out what to do with it.

25 MR. MEAD: Thank you, Your Honor.

1 MR. ROBINSON: Thank you, Judge.

2
3 ATTEST: Full, true and accurate transcript of
4 proceedings.

5
6 MAUREEN SCHORN, CCR NO. 496, RPR

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MAUREEN SCHORN, CCR NO. 496, RPR

1 MAUREEN J. SCHORN, CCR NO. 496, RPR

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3 Regional Justice Center
4 200 Lewis Avenue
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7
8 I N V O I C E
9

10 July 28, 2013

11 LEON F. MEAD II, ESQ.
12 3883 Howard Hughes Parkway,
Suite 1100
13 Las Vegas, Nevada 89169

14 ATT: Rita

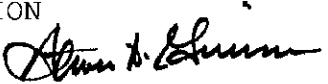
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7/25/13	Motion to Dismiss		
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MAUREEN SCHORN, CCR NO. 496, RPR

DISTRICT COURT, CIVIL DIVISION

CLARK COUNTY, NEVADA


CLERK OF THE COURT

* * * *

INNOVATIVE HOME SYSTEMS LLC,)
Plaintiff,)
vs.)
TIMOTHY TOM,)
Defendant.)

Case No. A-13-680766-C
Dept. XIV

REPORTER'S TRANSCRIPT
OF
MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT

BEFORE THE HONORABLE ADRIANA ESCOBAR
DISTRICT JUDGE

Taken on Tuesday, January 14, 2014

At 9:30 a.m.

APPEARANCES:

For the Plaintiff: LEON F. MEAD II, ESQ.

For the Defendant: GEORGE E. ROBINSON, ESQ.

Reported by: Maureen Schorn, CCR No. 496, RPR

MAUREEN SCHORN, CCR NO. 496, RPR

1 LAS VEGAS, NEVADA. TUESDAY, JANUARY 14, 2014, 9:30 A.M.

2 * * * *

3

4 THE CLERK: Innovative Home Systems versus
5 Timothy Tom, Case No. A680766.

6 MR. MEAD: Good morning, Your Honor. Leon
7 Mead on behalf Innovative Home Systems.

8 MR. ROBINSON: Good morning, Your Honor.
9 George Robinson for Timothy Tom.

10 THE COURT: Good morning, counsel. I know
11 we continued this matter several times, and I have
12 received the further filed information from Innovative
13 Homes and reviewed that as well.

14 So, first and foremost, I just want for the
15 record to clarify that both parties authorized my hearing
16 this, because I remember that was one of the issues. And
17 I don't know if I've had that on the record or not before,
18 but I just wanted to make sure.

19 MR. ROBINSON: Yes, that's correct, Your
20 Honor. We wanted to proceed in this courtroom.

21 THE COURT: Okay, all right. I just wanted
22 to make sure we get that on record. So then I believe
23 this is the first time we've really sat down to discuss
24 the merits of this matter, correct?

25 MR. MEAD: Yes, Your Honor. The first time

1 go-around you weren't here, you were on vacation or
2 something and Judge Brennan heard it, and we didn't really
3 get much done then.

4 THE COURT: So why don't we -- let's begin
5 here on Plaintiff's motion.

6 MR. MEAD: Thank you, Your Honor.

7 THE COURT: Let's go ahead and start.

8 MR. MEAD: Well, Your Honor, there's been
9 extensive briefing on this, and I don't want to bore the
10 Court going over the same issues multiple times.

11 THE COURT: No, I know. I've reviewed it
12 several times, but I don't mind you hitting the salient
13 points and what you feel needs to develop.

14 MR. MEAD: Quite simply, Your Honor, this is
15 a case where my client, Innovative Home Systems, has
16 completed work. There was a contract agreed to, there
17 were several changes to it. That work has been complete.

18 At the end of -- I should say as that work was
19 being completed, Mr. Tom decided that there were some
20 issues over when payment should be done, some minor things
21 that he wanted corrected.

22 He refused to make any further payments. My
23 clients tried to work with them for quite a while,
24 couldn't get that done; ultimately, had to proceed to
25 litigation recording a mechanics lien in order to ensure

1 the payment.

2 Mr. Tom took his issue at that point and claimed
3 that my client didn't have a contractor's license,
4 notwithstanding the fact that he had already done
5 substantial work for this project, and had been in
6 business for multiple years not needing a contractor's
7 license.

8 He took it to the Contractor's Board. He filed a
9 complaint with the Contractor's Board about deficient work
10 but, also, over whether or not they needed a license. The
11 Contractor's Board is the entity charged with enforcing
12 licensure in this state, Your Honor.

13 And, in fact, as we pointed out to the Court, if
14 the Contractor's Board becomes aware of an unlicensed
15 project going forward where the contract was entered into
16 while somebody was unlicensed, they're required to stop
17 that work from going forward, period, under statute.

18 They didn't do that in this case, notwithstanding
19 the fact that the complaint was asserted that there was a
20 contract entered into without a contractor's license when
21 one was needed.

22 The Contractor's Board looked at it, they did
23 their investigation. They issued a few minor issues they
24 wanted to be done. Literally, it took about an
25 hour-and-a-half for my client to fix the issues, most of

1 them were programming, and then closed the case and said
2 they were all resolved.

3 Mr. Tom still refused to pay his bill asserting,
4 again, that a contractor's license was necessary to
5 perform this work. We had no choice at that point but to
6 file a lawsuit to foreclose the mechanic's lien, and at
7 this point we are now before you.

8 That work of my client has been in place since
9 October of 2012, so it's been over a year. All warranties
10 have expired. There have been no complaints of it not
11 working.

12 The three things that are at issue that are
13 raised in the opposition that are alleged not to have been
14 done, are things that either are not billed for because
15 they were pulled out of the project and Mr. Tom directed
16 them not to do, or they weren't there at all.

17 There was no rack ventilation system in the
18 contract, one wasn't supposed to be installed. And the
19 side light laser Mr. Tom removed, it wasn't supposed to be
20 there. All my client was supposed to do was set it up so
21 it could be connected, which is there, and it's done.

22 The third issue on the sprinklers, Mr. Tom pulled
23 that out of the work when it wouldn't actually function.
24 And he has not been billed for that, that has been pulled
25 out of the contract.

1 THE COURT: What were the first two?

2 MR. MEAD: The ventilation system, rack
3 ventilation system, and some side-light glass. It's sort
4 of this film that was supposed to be put over the glass by
5 the door. It came with electronics and it goes opaque,
6 which is kind of wild.

7 What ended up happening is, Mr. Tom, himself
8 decided not to use that glass at all, and the other
9 contractor that he hired to actually do the installation
10 work performed whatever the glass work there was, and my
11 client just put wires to it.

12 So the determination of whether or not a license
13 was needed went before the Contractor's Board. The
14 Contractor's Board said there is no license here. They
15 found no valid claim on that issue, and sent us off to try
16 to collect our money.

17 So now Mr. Tom has got \$86,000 worth of equipment
18 for which he's paid about \$63,000. He's had it for well
19 over a year, it's been fully operational, and yet he
20 refuses to pay for it.

21 My client has done their job, done what they're
22 supposed to do, and we're before you now on this argument
23 that, a), he needs a license to even bring the lawsuit,
24 which we've already gone over, and, b), it's not lienable.
25 You can't get a mechanic's lien for it.

1 Well, none of that is accurate. We've already
2 demonstrated that a license wasn't needed for this work to
3 the extent there was any patching a hole or something that
4 has to go in. That's incidental work.

5 Clearly, under the statute that we supplemented
6 with the Court to show that when there's just merely
7 incidental stuff that goes along with it, the law doesn't
8 require a license.

9 Now, the issue comes up as to there needs to be a
10 license. I'm sorry, but Mr. Tom is the one who has the
11 burden to prove that, Your Honor, to claim that. My
12 client doesn't need it, and until there is a determination
13 that a license is needed, my client is under no obligation
14 to prove that he has the proper licensing for that work.

15 So given the fact that he's made the complaint to
16 the Contractor's Board. The Contractor's Board has a
17 legal obligation to stop him if one was needed, did not do
18 so; in fact, ordered him to go forward and complete the
19 work, as Mr. Tom requested, I think proves from the
20 Contractor's Board standpoint no license is needed.

21 Beyond that, the jurisprudence over 624.320,
22 which is the statute that would prevent my client from
23 going forward in any action, let alone a mechanic's lien
24 without a proper license, has clearly stated that when an
25 owner goes into a situation and alleges that the

1 contractor doesn't have a license, a proper license, but
2 nevertheless asserts that the contractor is obligated to
3 perform the contract, when he does that, he can't now turn
4 around and claim to receive the benefit of the work, or
5 that the contract is void because there's no license.

6 Once he goes to try and enforce the license or,
7 excuse me, enforce the contract, then his license issue is
8 no longer there. The Court is not going to allow somebody
9 to, basically, defraud a contractor out of that situation.

10 Beyond that, Your Honor, the jurisprudence in
11 this state has been on an expansive role in creating a
12 public policy since 1999 of ensuring the contractors and
13 the people who perform this type of work get paid.

14 It has become easier, if you will, for a
15 contractor to get paid, rather than harder. And we've
16 seen that in the expansive nature of the mechanic's lien
17 amendments in 2003 and 2005.

18 Now, counsel has raised the Fonagren (phonetic)
19 case from 1990, where the Supreme Court at the time under
20 that current statute has said that in order for a piece of
21 equipment to be lienable; in other words, you can get a
22 mechanic's lien for a piece of equipment, it has to become
23 part of the structure, okay, that it can't just be bolted
24 or removed and taken away. That's a fixture, if you will.

25 Well, in 2003 and in 2005, the Legislature

1 changed and the scheme changed, and for the first time a
2 definition of material was inserted. And, clearly, the
3 law says that a lien claimant or a contractor or a
4 supplier can get a lien for materials.

5 And in this case the definition now says
6 appliances are materials. So Fonagren, while I understand
7 that case is out there and it's good law for some things,
8 can't be used to interpret a statute that didn't exist
9 until 2005.

10 And even if it did, the new statute which is
11 going to be controlling, doesn't even use the term
12 "fixtures," it uses the term, "appliances."

13 So to stand on Fonagren to say that what my
14 client installed in this project is not lienable, is not
15 accurate and can't be used.

16 Clearly, these things enhance the value of the
17 property. They go in, they're connected to existing
18 systems. They operate and function to run the house.

19 And just like the new telephone system that was
20 put in for the Metropolitan Police Department that the
21 Contractor's Board said does not need a license to
22 install, this is the exact same thing where they're
23 plugging in component pieces, either to a wall, or into
24 existing wiring that they did not install, and programming
25 it to function.

1 So in our view, there's no doubt that it's
2 lienable. There's no doubt that it doesn't need a license
3 to be performed, and it's working as it's supposed to, so
4 there's no issue of material fact on any of that.

5 The last issue they've raised is this issue about
6 my client recording a Notice of Intent to Lien. Now, it's
7 true he recorded it, but he also served it. The Notice of
8 Intent to Lien, Your Honor, came out in 2003 out of a
9 situation where people were, or developers, actually, were
10 selling residential property.

11 But because of the way the statute works, you
12 don't need to record a mechanic's lien on a house within a
13 certain period of time after the individual house is done,
14 unless he only contracted to build one house.

15 They would enter into these agreements to build
16 300 houses, and then somebody would record a lien much
17 later. As one of the completed houses were getting ready
18 to be sold, out of the blue would pop up a mechanic's lien
19 which would stop the entire closing and it couldn't be so.

20 So what the Legislature did was say: Okay, look,
21 you have to send a notice 15 days before you record your
22 mechanic's lien, that you intend to record a mechanic's
23 lien, you have to serve it.

24 Now, that was just a notice to let people know,
25 hey, it's out here. It wasn't supposed to be a defeating

1 situation. In fact, if you sent the notice you get an
2 additional 15 days to record your lien. So it was one of
3 those situations where they just wanted notice to go out.

4 No doubt he got the notice. My client recorded
5 it. He wasn't aware of how it's supposed to be done, he's
6 a contractor, he's not a lawyer, okay. He recorded this
7 Notice of Intent to Lien.

8 And that's all it says, we're going to intend to
9 lien. It doesn't actually act as a lien. There is no
10 damage that has resulted from that. He can't point to any
11 lost sales, any demolition of value or anything else.

12 And then shortly after that, after it was served
13 on Mr. Tom, he recorded his actual lien. So it's much ado
14 about nothing, that procedural problem that my client
15 entered into that has no effect.

16 And, quite frankly, Your Honor, one of the
17 clearest things in mechanic's lien law from the 1860's is
18 the directive that we can't get caught up in mere
19 technicalities to bog down a system that is just supposed
20 to be simple and summary to get contractors paid.

21 In this case, Mr. Tom has done everything he can
22 to refuse to pay for materials and workmanship that he is
23 enjoying, has enjoyed for the last year and just doesn't
24 want to pay for it.

25 My client has suffered now over \$23,000 of owed

1 money to him. He's incurred attorney's fees, not only
2 just tried to negotiate through the problem back in
3 January when it first arose, like, January of last year
4 when it first arose, but through the Contractor's Board
5 investigations, through lawsuits to be filed, mechanic's
6 liens done, and multiple motions now before this Court to
7 deal with this very simple issue.

8 There are no facts in dispute. The materials are
9 what the materials are. He claims there are a couple of
10 things that aren't working, but as the Court can readily
11 see from the documentation, they weren't in the contract,
12 or my client said they're still not being billed for. So
13 there is no material facts in dispute.

14 My client has a license. He got it in the middle
15 of operating this contract, but he didn't do it because he
16 needed the license later, he did it for other commercial
17 reasons. There's no facts to dispute that.

18 There's no facts that dispute the contract.
19 There's no facts that dispute the determination by the
20 Contractor's Board that they didn't assert a claim against
21 him because he didn't have a license.

22 There's no facts that dispute that the
23 Contractor's Board was satisfied that the complaints
24 Mr. Tom had about the operation of the system were
25 resolved. There's no facts in dispute.

1 Everything is a legal question for this Court to
2 determine, whether or not this material is lienable,
3 whether or not the money is due is a simple fact.

4 So I think summary judgment is appropriate, Your
5 Honor. I think summary judgment for the entire amount is
6 appropriate. If not, at least summary adjudication on the
7 main issues are appropriate.

8 And if the Court deems necessary, I would request
9 that an expedited trial be set for the balance of whatever
10 the issues are before the Court. Thank you.

11 THE COURT: Thank you, counsel.

12 Mr. Robinson?

13 MR. ROBINSON: Did he just say that this was
14 simple, after he argued for about 20 minutes as to about
15 ten issues in this case?

16 What IHS is to trying to do is, they're trying to
17 walk an extremely fine line. They're trying to avoid the
18 requirements of the law, while wanting some protections
19 from other laws.

20 I'd like to start with IHS's argument that the
21 issues, the licensing issues were adjudicated by the
22 Board. The word "adjudicated" is used in the reply. That
23 is laughable.

24 An investigator came out, determined that the
25 work, not all of the work had been done properly, so some

1 of this work needed to be fixed. Some of the work was
2 fixed, and then we -- Timothy Tom decided that he was
3 satisfied with this, and we were just going to proceed to
4 the court system in order to resolve these issues.

5 There is absolutely nothing that shows that the
6 Board decided any of these issues. The Board never got to
7 hear any of these issues. All we have is a letter stating
8 that nothing else is going to be done by the Board.

9 We don't know if the Board forgot about the
10 licensing issues, the investigator just decided not to
11 turn over these issues to the Board. The investigator
12 decided within his discretion that IHS was already
13 licensed at the time that the Board got our Complaint, so
14 he decided not to turn over any issues for a formal
15 complaint to the Board.

16 But the fact that IHS states that these matters
17 were adjudicated, which would mean there would be a formal
18 complaint with the Board and a hearing would be had at the
19 Board, is ridiculous.

20 Now, they also argue that the Board was obligated
21 to do a Cease and Desist Order if the contractor wasn't
22 licensed and he was performing work. Well, the problem
23 with that argument is, that towards the end of the project
24 they actually did get a license.

25 So by the time these issues were turned over to

1 an investigator and/or the Board, IHS had a license, so
2 there was nothing to order in terms of that.

3 Now, why did IHS have a license? Mr. Mead said
4 IHS got a license for other things, or we were doing other
5 things. But the simplest explanation for that is, they
6 got a license because they realized that they were doing
7 work that they needed a license to complete, and so they
8 made that realization and they got a license.

9 Now, if we go back and we look at the
10 Administrative Code, it almost mirrors the invoice for the
11 things that were done at the Tom residence.

12 And that is in the opposition in terms of the
13 Administrative Code states, "Insulation, alteration and
14 repair systems that use fiberoptics or do not exceed 91
15 volts, including telephone systems, sound systems,
16 cable/television systems, closed circuit video systems,
17 satellite dish antennas, instrumentation and temperature
18 controls --

19 THE COURT: If you can please speak a little
20 bit slower?

21 MR. ROBINSON: I'm sorry.

22 THE COURT: And if you can direct me, I've
23 had a lot of these, but what area or part of your
24 opposition?

25 MR. ROBINSON: It's Page 7 of the

1 opposition, Your Honor. It's bolded under, "**Low Voltage**
2 **Systems.**"

3 THE COURT: Just a moment.

4 MR. ROBINSON: And if we look at that
5 section of the Administrative Code, like I say, it almost
6 mirrors all of the items included in the invoice that were
7 performed at the Tom residence.

8 The contract was for the installation of
9 thermostats, audio speakers, hearing agent controls,
10 landscape lighting, automatic pool controller,
11 surveillance equipment and -- (somebody coughed, missed a
12 word). And that is very similar to all of these lists in
13 the Administrative Code.

14 Now, IHS supplements its reply with a statute.
15 What was that statute?

16 MR. MEAD: 624.220, 4.

17 MR. ROBINSON: 624.220, Subsection 4, which
18 states that a licensed contractor can do incidental work
19 in terms of patching drywall and things like that.

20 So if you were a licensed contractor in terms of
21 performing plumbing, then you could do the plumbing and
22 you could cut maybe a little hole in the wall and do
23 incidental drywall patching.

24 But they cannot afford the protection of that
25 statute because they weren't -- they're saying that they

1 weren't licensed at that time and they didn't need a
2 license.

3 As stated in the opposition, we don't believe
4 that these advisory opinions that they've attached to
5 their renewed Motion for Summary Judgment should have any
6 effect on the Court, as the application for these advisory
7 opinions clearly states in bold that they apply only to
8 the specific facts and circumstances of a particular
9 project.

10 Now, if IHS wanted to use that argument, they
11 could have gone to the Board prior and said: Board, we
12 need an advisory opinion as to this project, because we
13 want to do these things, including all this low voltage
14 work, at the Tom residence, and we want your opinion as to
15 whether we need to be licensed or not. But they didn't do
16 that.

17 Now, in terms of IHS argues that many of these
18 things were just set down, plugged in, and then a lot of
19 the labor that went into this contract was for
20 programming.

21 Well, if that is the case, then they shouldn't be
22 entitled to a mechanic's lien. In terms of let's say if
23 you go to Sears and you buy a refrigerator, and they
24 deliver the refrigerator and they plug it into the wall.

25 Is Sears entitled to a mechanic's lien on your

1 home for the refrigerator? No. There are other remedies
2 that Sears could use in terms of taking the refrigerator
3 back, and those would be pursuant to UCC Section 9,
4 Secured Transactions and things like that.

5 In terms of the perfection of the lien, the lien
6 wasn't properly perfected because IHS did violate the
7 statute by recording the 15-day notice, which encumbered
8 the Tom residence for that period of time.

9 We have included a 56F Affidavit by myself in
10 terms of the discovery that needs to be done. What I
11 would like to do is depose either a member of the Board,
12 or the investigator as to the licensing issues. I believe
13 we also would need an expert witness, if this case were to
14 go forward, to testify as to the licensing issues.

15 Also, we've included my client's affidavit saying
16 that there are factual disputes as to what was done and
17 what was completed, and what was working and what wasn't
18 working.

19 It's nice that counsel for IHS wants to stand up
20 here and say there's no factual disputes because of this
21 and this and this. But what he's doing is, he would have
22 to testify to those things because we are disputing them,
23 and how we are disputing them is through that affidavit.

24 Lastly, I would say that Mr. Tom should be
25 entitled to attorney's fees for having to defend this

1 Motion for Summary Judgment that has been resubmitted
2 after a few months with advisory opinions that the Court
3 should not take into consideration at all.

4 The Board has clearly stated that they apply only
5 to the individual situations in question, and their
6 advisory opinions that have been out there for decades.
7 So they could have been attached to the initial motion.

8 That's all I have.

9 THE COURT: Mr. Mead?

10 MR. MEAD: Thank you, Your Honor. First of
11 all, Your Honor, certainly, Mr. Tom's affidavit is what
12 he's standing on to create issues of fact. Mr. Tom says:
13 I have disputes. That's all he says. He doesn't get into
14 any specifics, he doesn't talk about anything that's
15 currently going on.

16 In fact, it's the same affidavit that they filed
17 back in July. So the fact is, when we filed the motion
18 and brought out more specific issues, he doesn't even
19 address them. I don't even know if he saw a new question
20 or even saw it. We haven't heard from him for months.

21 Like I said, if this thing was problematic, you
22 would think he would still be making demands to have
23 things fixed, but he hasn't. Everything seems to be
24 operating just fine.

25 They claim that the Board does not adjudicate the

1 issue of the license. That's a problem for him because,
2 unfortunately, as I pointed out to the Court in both the
3 motion and in the reply, this Court really can't
4 substitute its determination for what the Board has done.

5 He filed a formal -- Mr. Tom filed a formal
6 complaint with the Contractor's Board. That filing
7 obligated the Board to investigate all issues that arose
8 there, and if they had something to bring before the
9 Board, to adjudicate it there.

10 If Mr. Tom didn't like what the Board did,
11 Mr. Tom is obligated to file a contested case before the
12 Board. And if the Board doesn't turn around, he's
13 required to file a declaratory judgment against the Board,
14 not my client.

15 So for counsel to assert that nothing was
16 adjudicated before the Board, is because counsel and
17 Mr. Tom didn't adjudicate it where it was supposed to be
18 laid out under the Nevada Administrative Act.

19 The investigator looked at it. He didn't just
20 decide unilaterally that's all conjecture, that's all
21 speculation. There is no indication of that.

22 The statute clearly states that when a contractor
23 is unlicensed at the time of the bid when the contract was
24 entered into, that the Board has to issue a Cease and
25 Desist Order if it's an unlicensed contractor.

1 That's 624.212, laid it out for the Court, very
2 obvious. You can't -- the contractor can't just say: Oh,
3 I'm not going to look at that. There is the mandate in
4 the statute. They have to assert that to the Board.

5 But they ordered him to go out and actually
6 enforce the contract, which is where the damage arises.
7 Mr. Tom has asserted to enforce the contract, and he can't
8 now complain that he was unlicensed when the contract was
9 entered into.

10 Now, counsel brings you back to the
11 Administrative Code, and reads to the Court the section
12 for 2(d) license, which lays out installation of telephone
13 systems, et cetera.

14 Except that the advisory opinions that came from
15 the Contractor's Board specifically addressed the
16 installation of a phone system in the Metropolitan Police
17 Department station, and found that because they were just
18 inserting new equipment into existing lines and existing
19 things that were there, just like what happened with
20 Mr. Tom, he didn't need a license.

21 Now, I can't go to the Board and ask for an
22 advisory opinion as to whether or not my client needs a
23 specific license for this project. My client has been in
24 business for years without needing a license.

25 Mr. Tom wasn't their first project. They've

1 never been hauled up before the Contractor's Board before
2 in needing a license.

3 And, as we laid out, the only facts before the
4 Court are the fact that my client testified he got a
5 license because he wanted to start doing commercial work,
6 and it was easier for him to install lines and things that
7 he didn't install before, and he needed a license to do
8 that. That's the only facts before the Court.

9 To say: Oh, they realized they need one is pure
10 supposition. There's no facts before the Court from that,
11 and there's no dispute. So that I think is summary
12 adjudication at a minimum.

13 So it's not up to my client to go and ask for an
14 advisory opinion. Mr. Tom, if he had doubts, should have
15 picked up the phone and called the Board and said: Hey,
16 does a contractor need a license for this?

17 He didn't do that. And it's his burden to show
18 that a license was necessary for my client to have this in
19 order to avoid summary judgment. Now, they didn't do
20 that, so there's no need to, and my client didn't need to
21 get an advisory opinion.

22 Finally, he says: Oh, Sears can't come and get a
23 mechanic's lien on your house if you don't pay for the
24 refrigerator install. I hate to tell you; yes, they can,
25 okay.

1 And the fact that the UCC 9 and other remedies
2 are available are irrelevant, because of the canceling
3 statute where it specifically says that the remedies of a
4 mechanic's lien do not affect any other rights the
5 mechanic's lien claimant might have, including contracts,
6 UCC's, security or anything else.

7 The fact that there's a different type of
8 security to a contractor available is not a preclusive
9 issue over whether or not somebody gets a mechanic's lien
10 for installing and providing appliances which are clearly
11 designated as materials that are lienable under the
12 statutes.

13 And then, finally, as I mentioned before, he
14 bases his factual disputes on Mr. Tom's affidavit. Again,
15 Mr. Tom's affidavit is a one-sentence summary: "My client
16 has laid out specifics," and a one-sentence, "I deny it,"
17 is not evidence that the Court can accept as raising an
18 issue of fact.

19 As to the issue of attorney's fees, Your Honor,
20 the first time we brought this motion it was denied
21 without prejudice, clearly says we could bring it again.

22 They filed Motion to Dismiss -- I mean a
23 counterclaim and a Third Party Complaint. Clearly, we
24 were entitled to bring again attorney's fees are not
25 warranted.

1 And, finally, Your Honor, what you didn't mention
2 in the opening, the Third Party Complaint was filed
3 against my client's contractor's license bond. The
4 Complaint alleges that it was a violation of Chapter 624
5 in not having a licensed bond, which is the violation for
6 which a claim on the licensed bond is made so, obviously,
7 that doesn't apply.

8 But the fact that he had asserted these claims to
9 the Contractor's Board, and the Contractor's Board found
10 no violation, that is the basis of a claim on a
11 contractor's license bond, a violation of Chapter 624.

12 The fact that the Board did not adjudicate any
13 violation means there can be no Complaint, and summary
14 judgment is appropriate on that Complaint. That's it,
15 Your Honor. Thank you.

16 THE COURT: Thank you. I have a question,
17 counsel. Have you been instructed to contemplate a
18 settlement conference?

19 MR. MEAD: Your Honor, we've tried
20 settlement conferences many times, we tried to talk
21 off-line about it. We're not going to get there.

22 I mean, quite frankly, the Contractor's Board
23 investigation was sort of like that, and it didn't go very
24 far. We've had a very difficult time getting Mr. Tom even
25 to show up and state to discuss this. So I don't see that

1 it's going to help very much.

2 MR. ROBINSON: I don't know why counsel for
3 IHS said that. I've never been a part of all of the
4 parties getting together and trying to resolve the
5 situation. I don't think that it would be a bad idea.

6 MR. MEAD: Well, Your Honor, he hasn't
7 been -- with all respect, counsel, he wasn't the one at
8 the beginning of this that was dealing with it. It was
9 his partner in his law office that was dealing with it.

10 But there has been no indication at all. We
11 tried in the very beginning of this case to get together.
12 As I point out to the Court, I actually submitted to the
13 Court the initial emails where we tried to get together
14 and do a walk-through.

15 Mr. Tom; no, blew it off, forget about it. My
16 client is the one who has incurred now so much money to
17 collect, you know, he's had to sit down to a settlement
18 conference.

19 And the idea of Mr. Tom trying to get a further
20 discount on this is just appalling. But I'm not saying my
21 client is opposed to it, I just don't think it's going to
22 happen really well.

23 MR. ROBINSON: Well, that's really nice for
24 counsel for IHS to say those things, but he hasn't been
25 involved in this case from the very beginning, the very

1 beginning when we offered his client substantial amounts
2 of money to resolve the situation. And his client --

3 THE COURT: Counsel, I really cannot be
4 privy to the settlement conference.

5 MR. ROBINSON: Well, I mean, that was half
6 of his argument.

7 THE COURT: I am just asking generally.

8 MR. ROBINSON: I'm not opposed to it.

9 THE COURT: Okay. I'm going to set this out
10 two weeks for a decision, a status decision. I'd like to
11 set this for February 4th at 9:30. Are you both free?

12 MR. ROBINSON: I have a trial on that day.

13 THE COURT: Is your trial also on the 6th?

14 MR. ROBINSON: No. It will be over.

15 THE COURT: Mr. Mead, what about Thursday at
16 9:30?

17 MR. MEAD: I'm available that day, Your
18 Honor.

19 THE COURT: I'd like to set this for a
20 status decision then.

21 MR. MEAD: Obviously, Your Honor, we've done
22 a lot of work on this thing, and the attorney's fees just
23 keep piling up.

24 THE COURT: Right. Well, if I'm able to
25 render a written decision before, I will; otherwise I'll

1 be ready then.

2 MR. MEAD: Thank you, Your Honor.

3 MR. ROBINSON: Thank you.

4

5

6 ATTEST: Full, true and accurate transcript of
7 proceedings.

8

/s/ Maureen Schorn

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MAUREEN SCHORN, CCR NO. 496, RPR

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MAUREEN SCHORN, CCR NO. 496, RPR

1 MAUREEN J. SCHORN, CCR NO. 496, RPR

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7
8 I N V O I C E

9 February 10, 2014

10 GEORGE E. ROBINSON, ESQ.
11 Pezzillo Lloyd
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13 ATT: Staci Hollingsworth

<u>DATE</u>	<u>DESCRIPTION</u>	<u>PAGES</u>	<u>AMOUNT</u>
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1/14/14	Motions	27	95.85
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CHRONOLOGICAL

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IHS' Errata to Opposition to Motion to Dismiss or in the Alternative Summary Judgment	7/10/2013	2	JA00292
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Innovative Home Systems LLC's Supplement to Its Motions to Dismiss the Counter-claim and Third Party Complaint; For Summary Judgment (or in the Alternative Summary Adjudication of Issues), and Petition for Preferential Trial Setting	1/10/2014	3	JA00644
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