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IMPORTANT MESSAGE! CONSTRUCTION MANAGER ON PRIVATE WORKS DO NOT NEED TO BE LICENSED

It has always been thought that a Construction Manager needs to be licensed on public works. However, in a recent case, *The Fifth Day, LLC, v. James P. Bolotin*, held that this may not be the case. The Court of Appeal reversed the judgment that was entered by the Los Angeles Superior Court. This ruling, which was not a unanimous decision, may be considered factually specific. There was one very strong dissenting opinion.

The Plaintiff (Fifth Day) had entered into an agreement to give some "industrial real estate development and construction project management" services on private work property. Fifth Day sued Bolotin for compensation owed to Fifth Day for services rendered. Fifth Day was also responsible for financing some of the construction. Some of the duties that Fifth Day was to perform was to assist, on behalf of the owner in coordinating activities to complete assigned tasks, to maintain various records such as financial books and insurance certificates, keep the owner up to date on the project as well as be the on-site "point person", responding to issues that may arise. Fifth Day was not responsible for performing any of the construction work. Fifth Day performed all of its duties under the contract and construction was completed. Fifth Day stated that they were not paid all of the monies due to it.

When the case went to appeal, the main question was if Fifth Day provided Construction Management services to a private owner of property; Did Fifth Day have to be licensed in accordance with the Contractors' State License Law? The law itself, does not classify Construction Managers as requiring a license.

The main areas of the law that were discussed were *Business and Professions Code* Sections 7026 and 7057. Section 7026 defines the term "contractor" and explicitly states different activities in the law. It was an undisputed fact that Fifth Day did not contract with the Owner to perform any of the activities that are listed in Section 7026, nor to perform any of those activities.

Bolotin also cited Section 7057 of the *Business and Professions Code*. This section basically defines what a general building contractor is. The Court of Appeal felt that "Section 7057 provides that any *contractor* who engages in the listed activities is a general building contractor....If Plaintiff is not a contractor (because it does not perform the activities listed in section 7026 which defines a contractor), it is, by definition, not a general contractor."

Basically when the Court of Appeal rendered its decision, they stated that the Legislature is empowered to determine whether a Construction Manager on a private works project needs to be licensed as they do for public works and that unless and until the Legislature does this through the proper channels, Construction Managers do not need to be licensed.

The dissenting judge felt that this decision leaves room for unqualified, unscrupulous, and unlicensed contractors, to use a loophole in the license requirement by calling themselves Construction Managers instead of Contractors, which is not what the Contractor's License Law is intended to mean.

Be very careful using the term Construction Manager.

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NOW OFFERING

Collecting Your Money Through The Use Of Mechanic's Liens, Stop Notices, Bonds and Prompt Pay Laws A Half-Day Breakfast Seminar By Sam K. Abdulaziz

In today's economy, collecting your money is a necessity!!!

Sam Abdulaziz is an acknowledged expert in the field of mechanic's liens, stop notices and bond rights. He has been giving lectures in this area for many years, and his book on the subject is updated annually. His lectures and workshops have been attended by **REGULATORS**, as well as **LEGISLATORS**, and have been approved for continuing education for attorneys. The lectures are spiced up with "**REAL WORLD**" examples just for contractors, subcontractors and material suppliers. At this very time Sam is representing many construction associations and exchanges before the California Law Revision Commission to make sure lien rights are not curtailed.

The mechanic's lien issue was an important part of Sam's successful argument to the California Supreme Court on the "Pay if Paid" clause. This will be discussed at the workshop.

This workshop is important for both the contractor and any members of the staff who are involved in handling collections, including liens, stop notices and bond rights. If you pick up just one pointer from Sam during this workshop, it will make your attendance worthwhile.

Any of you that have been to Sam's seminars know how informative and entertaining they are. Those who have not, do not know what they are missing.

The cost for the seminar is \$95.00 for the first person from each company and each additional person from the same company is only \$60.00. All of this must be prepaid. **Instructional materials and flow charts will be distributed. Both clerical personnel and contractors should attend.**

To register, please click on the link below for our registration form and fill out the bottom portion of that form and send a check in the appropriate amount to: Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458. Or you can fax your registration with Visa or MasterCard payment to us at (818) 760-3908. If you have questions, please contact us by email info@agrlaw.net or phone, (818) 760-2000. **Check-in and breakfast for each seminar will start at 8:30 a.m. and the seminar begins at 9:00 a.m. ***

DATES AND LOCATIONS

LONG BEACH, CALIFORNIA

October 6, 2009

HOLIDAY INN-LONG BEACH AIRPORT
2640 Lakewood Blvd., Long Beach, CA 90815

STUDIO CITY, CALIFORNIA

October 15, 2009

SPORTSMEN'S LODGE
12825 Ventura Blvd., Studio City, CA 91604

RIVERSIDE, CALIFORNIA

October 19, 2009

MISSION INN
3649 Mission Inn Ave., Riverside, CA 92501

[CLICK HERE FOR THE REGISTRATION FORM](#)

Attention California attorneys! Sam Abdulaziz certifies that this activity has been approved for 2.5 hours of California MCLE credit by the State Bar of California.

**Refund Policy: Full refund if requested at least 30-days prior to the date of the seminar.
Register Early! Space is limited at some hotels and have sold out in the past!*

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EXCERPT FROM A BOOK CALLED *DISORDER IN THE AMERICAN COURTS*

ATTORNEY: Doctor, before you performed the autopsy, did you check for a pulse?

WITNESS: No.

ATTORNEY: Did you check for blood pressure?

WITNESS: No.

ATTORNEY: Did you check for breathing?

WITNESS: No.

ATTORNEY: So, then it is possible that the patient was alive when you began the autopsy?

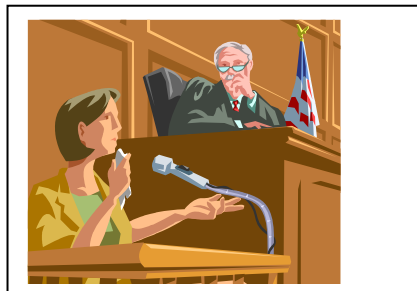
WITNESS: No.

ATTORNEY: How can you be so sure, Doctor?

WITNESS: Because his brain was sitting on my desk in a jar.

ATTORNEY: I see, but could the patient have still been alive, nevertheless?

WITNESS: Yes, it is possible that he could have been alive and practicing law.



WHO DETERMINES IF A DISPUTE SHOULD BE ARBITRATED OR LITIGATED?

First, one must understand that arbitration is consensual. That is to say that the parties must agree to arbitrate the dispute. Typically, arbitration might be written into the contract or can be agreed to by the parties sometime later. This case discusses who decides whether a dispute is arbitrated or litigated.

Patricia Sanford purchased a product through a call center. At the time she purchased the product, customers who called were offered a free trial enrolment in an entity known as "MemberWorks Membership Program." MemberWorks claimed that Sanford enrolled in its program and was sent a membership kit. Sanford also was told that included in that membership kit was an agreement containing an arbitration clause. Sanford did not cancel her membership at the end of the trial period.

MemberWorks began billing her for a membership fee because that was what was in the contract Membership Kit. Sanford claimed that she was unaware of the MemberWorks program dealing with arbitration, and filed suit against MemberWorks. MemberWorks filed a Motion to Compel Arbitration. Evidently, there was an arbitration provision in the kit and the initial agreement. The Trial Court found that Sanford was challenging the validity of the formation of any contract and therefore the issue should be settled by arbitration. The Arbitrator would have to decide the case.

However, the Appellate Court stated that a challenge to the existence to a contract itself is an issue for the court to decide. The reason for that is arbitration is a voluntary matter. The parties have to agree to arbitrate in order to have arbitration. Here, the court held that a court must determine that a valid agreement to arbitrate exists before it can order the parties to submit to arbitration. Therefore, before the issue of damages could be decided, the existence of a contract must be determined, and only thereafter, would either a court or an arbitrator decide the case.

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This is a new law dealing with toxic substances. This law requires the Department of Toxic Substances Control and Hazardous Materials to adopt regulations to establish a process by which chemicals or chemical ingredients in products may be identified. The law specifies a procedure for adoption of those regulations, including requiring that the Department, in adopting those regulations, prepare an evaluation, etc.

This is to be done by January 1, 2011.

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POPULATION BREAKDOWN

The population of this country is 300 million.
160 million are retired.
That leaves 140 million to do the work.
There are 85 million in school.
Which leaves 55 million to do the work.
Of this, there are 35 million employed by the federal government.
Leaving 15 million to do the work.
2.8 million are in the armed forces preoccupied with killing Osama Bin-Laden.
Which leaves 12.2 million to do the work.
Take from that total the 10.8 million people who work for state and city Governments.
And that leaves 1.4 million to do the work.
At any given time there are 188,000 people in hospitals.
Leaving 1,212,000 to do the work.
Now, there are 1,211,998 people in prisons.
That leaves just two people to do the work.
You and me.
And there you are,
Sitting on your rear,
At your computer, reading jokes.
Nice. Real nice!

(((O))

MEDIATION SETTLEMENTS

Although arbitration is favored by the courts, there are some deviations. In a past case, an arbitration provision that was negotiated by the parties during a formal mediation was not enforceable. The reason for that was that matters negotiated during a mediation are privileged. They are privileged because the courts want to be sure that the parties can say what they wish to say during the mediation and not have it come back and bite them. In order for the arbitration provision to be disclosed, the parties must expressly agree that the arbitration provision is part of the language that was negotiated. The language should be something similar to "This settlement is admissible and enforceable in a court of law."