Case Law Update   March 2013

Florida Supreme Court Solidifies Zero Tolerance for Unlicensed Contractors

Earth Trades, Inc. v. T&G Corporation 2013 WL 264440 (Fla. 2013)

In *Earth Trades, Inc. v. T&G Corporation*, 2013 WL 264440 (Fla. 2013), the Supreme Court of Florida reinforces its established position that contracts entered into by unlicensed contractors are unenforceable.

T&G as general contractor entered into a subcontract with Earth Trades for Earth Trades to perform site work for the construction of a parking garage. A dispute arose between the parties, and Earth Trades filed a breach of contract action against T&G for non-payment. T&G filed a counterclaim against Earth Trades alleging breach of contract and filed a third party claim again the performance and payment bond issued for the Project. As a defense to Earth Trades' claims, T&G argued that Earth Trades was an unlicensed contractor, and therefore, pursuant to Fl. Stat. 489.128, Earth Trades could not enforce the terms of its subcontract with T&G. In response, Earth Trades and the surety argued that T&G was also barred from enforcing the subcontract because the parties were *in pari delicto*. In other words, it was argued that because T&G knew that Earth Trades was not properly licensed, the parties were equally at fault and therefore, T&G could not enforce the subcontract. The trial court disagreed with Earth Trades and the surety and granted T&G's Motion for Summary Judgment.

The Florida Supreme Court, in affirming the trial court's ruling stated:

> As a matter of state policy, the Legislature has imposed a substantial penalty on the unlicensed contractor as the wrongdoer with regard to a construction contract.

> In order to protect the public and to prod contractors into obtaining the required licensing, the Legislature has, as a matter of state policy, greatly disadvantaged the contractor who chooses not to obtain the legally required license.

> Thus to avoid the draconian effects of the statute, the unlicensed contractor need only comply with the law.

What This Means For You.

To check whether a contractor is licensed conduct a search at Florida Department of Business & Professional Regulation.

Florida Department of
Business & Professional Regulation

As a matter of public policy, contracts entered into ...by an unlicensed contractor shall be unenforceable in law or in equity by the unlicensed contractor.

489.128 Florida Statues

Serving the Construction Industry

With over 50 years of combined experience in all aspects of construction law, the attorneys of Gregory S. Martin & Associates are dedicated to representing those in the construction industry. Having represented national and international owners, contractors, design professionals and their carriers in Florida and throughout the country, our attorneys are committed to the highest professional standards and service. Mr. Martin and the members of his team have litigated multi-million dollar disputes involving, among others, construction and design defects, extra work, differing site conditions, schedule delays and acceleration, contract payment disputes, construction and mechanics' liens, payment/performance bonds and bid protests.

Because of the unique construction-related and technical backgrounds of each of the members of the firm and the fact that Gregory S. Martin & Associates focuses its practice on construction cases, the firm is able to provide unparalleled service to the construction industry at the greatest value to its clients. The firm's attorneys provide superior service, knowledge.

Attorneys	Contact	Web
Gregory S. Martin, Shareholder	*Florida Office:*	www.gsmartinlaw.com
Frank J. Hild, Partner		
Beth-Ann Schulman, Partner	*555 Winderley Place,*	
Jessica H, Austin	*Suite 415*	
Megan A. Policastro	*Maitland, FL 32751*	
Miguel A. Rosada		
	Telephone (407) 660-4488	
	Facsimile: (407) 660-4540	