

CA Court of Appeal Confirms Unlicensed Subcontractor's Workers May Assert Wage Claims Against General Contractor

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In Sanders Construction Company, Inc. v. Cerda, 2009 DJDAR 9714, issued June 29, 2009, the Fourth District Appellate Court confirmed that, by operation of Labor Code § 2750.5, an unlicensed subcontractor's workers are statutory employees of the general contractor, which may obligate it to pay their wages.

On June 29, 2009, the California Fourth District Court of Appeal, in *Sanders Construction Company, Inc. v. Cerda*, confirmed that general contractor Sanders Construction Company, Inc. ("Sanders") was the statutory employer of not only its unlicensed subcontractor but also the unlicensed subcontractor's workers, entitling the workers to wages and interest. The Court rejected Sanders's argument that Labor Code § 2750.5, which establishes "a rebuttable presumption affecting the burden of proof that a worker performing services for which a [contractor's] license is required . . . or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor...", only applies to cases involving worker's compensation and unemployment benefits. The *Sanders* Court "discern[ed] no meaningful distinction... between being paid wages and receiving other benefits based on wages." It found that, "[i]n both instances, the same policy reasons militate against allowing a general contractor to escape liability for the obligations of an unlicensed subcontractor."

Beginning in 2006, Sanders and its drywall subcontractor Humberto Figueroa Drywall Company ("Humberto") began to disagree about the quality of the work and the payments made from Sanders to Humberto. Even after Sanders discovered that Humberto's California contractor's license had expired, it continued to work with Humberto to complete the project. Thereafter, six of Humberto's workers filed wage claims against Sanders with the State Labor Commissioner.

The Labor Commissioner, the superior court and the appellate division of the superior court, relying on *Hunt Building Corp. v. Bernick*, 79 Cal. App.4th 213, 220 (2000), all agreed that Sanders was the statutory employer of Humberto's workers, entitling those workers to wages and interest from Sanders. Sanders applied for certification to the Fourth District Court of Appeal to decide whether a general contractor may be held liable for the unpaid wages of an unlicensed contractor's workers.

Fourth District Appellate Court's Earlier *Hunt* Decision Provided Foundation for *Sanders* Decision

In *Hunt*, Hunt Building Corp., a Texas corporation and licensed California building contractor, was a general contractor performing construction work on federal military installations in California. To perform the work, Hunt engaged three subcontractors that were not licensed in California. The subcontractors failed to file state quarterly returns for contributions to unemployment insurance, disability insurance and employment training. The California Employment Development Department (EDD) assessed Hunt for the subcontractors' unpaid contributions and withholding taxes. After it paid the disputed assessment, contested the assessment and unsuccessfully sought refund before the California Unemployment Insurance Appeals Board, Hunt filed its superior court complaint for a refund.

The trial court determined that subcontractors were not required to obtain California contractors' licenses in order to work on federal land and that Unemployment Insurance Code §§ 621.5 and 13004.5, incorporating the presumption of employee status contained in Labor Code § 2750.5, "did not apply to the federal contracts out of which the assessment arose." The Court then entered judgment for Hunt, ordering EDD to refund \$38,714.28 plus prejudgment interest.

The Fourth District Court of Appeal reversed, holding that Congress "expressly deferred to state unemployment compensation laws regarding contracting services performed on federal land." 26 U.S.C. § 3305(d). It found that Section 2750.5 "operates to conclusively determine that a general contractor is the employer of not only its unlicensed subcontractors but also those employed by the unlicensed subcontractors," and deemed Hunt the "statutory employer" of the unlicensed subcontractors' workers.

Contractors May be Held Liable for their Unlicensed Subcontractors' Workers' Unpaid Wages

In *Sanders*, Sanders persistently argued that the rebuttable presumption established in Section 2750.5 only applies to cases involving worker's compensation and unemployment benefits, relying on public policy considerations expressed in *Hunt*. The *Sanders* Court disagreed, concluding that the same public policy considerations concerning the subterranean economy (*i.e.*, where contractors hire unlicensed subcontractors and pay them in cash, resulting in the "loss of large sums in taxes, employee social insurance contributions, and employee pension funds") could apply under the present circumstances. It recognized that "an unscrupulous general contractor could collude with an unlicensed subcontractor to cheat workers hired by the subcontractor out of their wages, plus all the related benefits."

The Court, rejecting Sanders's argument that it would be prejudiced by not being able to verify the workers' wage claims, recognized that the same uncertainties could exist about the amount of wages and other factors with respect to unemployment and disability contributions, claims addressed in *Hunt*. It "discern[ed] no meaningful distinction... between being paid wages and receiving other benefits based on wages." It found that it "was fundamental that workers be paid."

The Court further found that Business & Professions Code § 7031 did not bar the workers' claims because it does not apply to a person who receives wages as his or her sole compensation, who does not engage in an independent business and who cannot control how the work is performed. Section 7031 bars legal action by an unlicensed contractor "to collect compensation for services for which a license is required." The Court concluded that the workers were not required to be licensed contractors to perform the work they did.

In response to the *Sanders* decision, if not already doing so, contractors and subcontractors should take adequate precautions to ensure that their subcontractors and subcontractors' employees are and remain properly licensed.

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