CONSTRUCTION MANAGER ON PRIVATE WORKS DO NOT NEED TO BE LICENSED

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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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