

Contractor Unable to Reclaim Unpaid Work Due to Unlicensed Status Under the ALAA

Russell B. Robertson and Amanda V. Robertson v. Anthony Lynn Duncan and Lonnie O. Duncan, No. 2190473, 2020 WL 7086168 at *1 (Ala. Civ. App. 2020)

This case is an example of the importance of maintaining licensing to ensure recovery of fees from contracts. The trial court considered a dispute between a client and contractors, who were brothers as to the non-payment of work done above an oral quoted amount. The clients claim that their contract was with one of the brothers, an unlicensed contractor, and who later brought his brother, who was a licensed contractor, into the deal to assist with the home repairs. The brothers would bring a myriad of claims to recover the unpaid damages, including a mechanics lien, with the unlicensed contractor as the lien claimant.

The clients would counterclaim, alleging among other things that the brothers had violated the Litigation Accountability Act (ALAA), which were denied by the trial court. The appellate court found that the unlicensed contractor could not bring an action to enforce a contract for a home repair because he was unlicensed, and therefore was unable to claim the lien on the matter and furthermore had violated the ALAA due to his unlicensed status. Had the contractor had his license, or even allowed his brother to make the claims as a licensed contractor, it is likely that they would have been awarded the value of the unpaid work in full.

Subcontract to Govern on Inconsistent Terms



Terrell v. Oak Alley Homes, LLC, 2021 W.L. 138829 (Ala. Civ. App. 2021)

The case relates to the performance of services despite the absence of a firm written contract. This case demonstrates the importance of keeping some sort of written records in corresponding with clients. In this case, a client contacted a contractor regarding work for her home after a flooding incident. The contractor provided an estimate of \$65,000 and submitted the amount to the client's insurance carrier and was approved by the insurance company. The contractor sent the client a text letting them know the cost of the project and the client told the contractor to begin work as soon as possible. The contractor sent the client two invoices with the estimate clearly shown on the invoices and the client paid the first two without issue before disputing the third invoice amount. The contractor would ultimately sue for breach of contract for the remaining balance of the work performed. The client argues that they had changed work during the time and thus that there was no definitive contract as required by law. The court found that while there was no official written contract, the text messages, coupled with the payment of the first two invoices, were enough evidence to infer that a contract existed between the parties. The court also found that the work was sufficiently certain to make the changes to the work during the project irrelevant and therefore ordered the contractor be compensated.

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Court Rules on Jurisdiction of an Out-of-State Company

Ex. Parte LED Corporations, Inc., 303 So. 3d 1160 (Ala. Civ App., 2020)

A Florida lighting supply company was sued by an Alabama electrical subcontractor. The Florida company requested that the court dismiss the claims against them because the Florida company did not have “jurisdiction” with the state of Alabama since they were an out-of-state company. The court found that because the Florida company had an employee visit the state, was supplying things for an Alabama construction contract and had a contract with an Alabama company, that was sufficient “minimum context” with the state of Alabama to subject it to jurisdiction by the Alabama court. The court found that if the Florida company only had a contract with an



Alabama company that would not be enough to hail them into an Alabama court. Notably, this case did not involve a clause in the contract that stated that any claims would be in Alabama. Presumably, had that existed, there would be no question as to whether the Florida company could be sued in an Alabama court.



Arbitration Clause Held to Be Unenforceable When Work Is Outside the Scope

Wayne Farms LLC v. Primus Builders, Inc., 2020 WL 7778225 (Ala. 2020).

The court in this case considered, among other things, a subcontractor that was hired to perform work to an installation by the contractor that was specifically outside of the agreement between the two parties but essential to the work to be completed.

The client hired a contractor to expand operations, who later hired a subcontractor to install a refrigeration unit necessary for the expansion. The client and the contractor had a provision in their agreement that could force arbitration in the event of litigation. In installing the refrigeration unit, an extra process was needed that was expressly outside of the original agreement between the client and the contractor. The client would contract with a third party to complete this process on the installation done by the contractor and its subcontractor. Sometime during the installation process, the third parties work did not go according to plan and as a result, the refrigeration unit was ruined and the work was halted.

The client brought claims against the contractor, sub-contractor, and third party for breach of contract. The contractor moved to have the arbitration clause in the agreement enforced and the trial court approved the motion. The client counterclaimed and said the clause was unenforceable. The Supreme Court of Alabama agreed, saying that because the scope of the work was outside of the agreement, the arbitration clause was not binding on the client because the work in question was specifically outside the obligations or performance section. The work was performed by a third party and therefore the contractor could not force arbitration upon the client.



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