

## Show Me the Money, Show Me Your License

[www.midatlantic.construction.com](http://www.midatlantic.construction.com)

By Alison Mullins

**The construction industry** faces serious cash flow challenges. It is critical to the viability of your company that you effectively manage cash flow and get paid. A failure to obtain and maintain proper licensing is one of the most available and potentially fatal mistakes you can make. A recent decision of the Fairfax County Circuit Court in Virginia demonstrates the harsh implications for a contractor who did not follow the rules regarding monetary limits of contracts for their class of license. The court ruled that, under state law, the contractor could not sue for more than the monetary limit of its license.

**Monetary Limits Enforced** In *Daniel Jones Remodeling, L.L.C. v. Johnny Cheng-The Chiu, et al.*, the general contractor entered into a contract to remodel portions of a home for the owners. The contract amount was \$128,600, plus extra for any change orders. Throughout the project, owners requested several changes that involved extra labor and materials. The total of the owner requested additional work was approximately \$62,000.

The contractor completed the project. The owners paid the general contractor the base contract amount in full. The owners refused to pay the general contractor for the owner requested extras. The general contractor filed both a lawsuit and a mechanic's lien.

The owners claimed the general contrac-

tor held only a Class B contractor's license in Virginia. A Class B contractor's license limits the maximum amount for a single project to \$120,000. Virginia statutes further provide that it is against the law for a person to enter into a contract without the proper class of license for the value of the work to be performed. Therefore, the owners argued that the general contract did not have standing to maintain the lawsuit against them because the base contract price was more than \$8,000 above the general contractor's license limit.

In a ruling of first impression, the trial court cited the long-standing maxim that, "[A] contract made in violation of a police statute enacted for public protection is void and there can be no recovery thereon." The trial court held that the contractor violated the licensing statute by exceeding the Class B compensation limits. Despite having a Class B license, the court ruled the contract was unenforceable and dismissed the contractor's claims.

**Awareness at Every Level** General contractors are not the only ones who need to be concerned with monetary license limits and license requirements. Subcontractors should be aware of the laws regulating their licenses. Further, subcontractors should be mindful of the licenses held by the general contractors they are working under on projects. If the general contractor cannot get paid by the owner, the general contractor may not have an obligation or means of paying the subcontractor. Owners and design professionals need to know these issues as well.

**Application State by State** Licensing laws and regulations vary from state to



Alison R. Mullins, Esq. is an associate with Hughes & Associates. She may be reached at [alison@hughesnassociates.com](mailto:alison@hughesnassociates.com) or by calling at 703-671-8200.

state. What type of license is required, the qualifications to get the required license and the limits of the license may be vastly different in even neighboring states. Finally, the implications of improper or lack of licensure vary wildly from state to state. It is absolutely critical to know the licensing statutes in every state you have a project.

**Lessons Learned** In today's economy every dollar counts and getting paid is tough. Contractors and subcontractors need to protect their rights to get paid. Taking basic and simple steps, such as knowing your license limits and following the rules, is imperative to making clients show you the money.

This article is not intended to provide specific legal advice, but instead as general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice you may receive will depend upon your facts and the laws of your jurisdiction. <<