

1982

Harry Loader dba Loader Aluminum Co. v. Scott Construction Corp. : Brief of Appellant

Utah Supreme Court

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John H. McDonald; Craig S. Cook; Attorneys for Defendant-Appellant;
Stanley Smith; Attorney for Plaintiff-Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

HARRY LOADER, dba LOADER
ALUMINUM CO.,

Plaintiff-Respondent,

vs.

Case No. 18305

SCOTT CONSTRUCTION CORP.,

Defendant-Appellant.

BRIEF OF APPELLANT

Appeal from the Judgment of the
Fourth Judicial District Court, Utah County
Honorable George E. Ballif

JOHN H. McDONALD
370 East 500 South, #100
Salt Lake City, Utah 84111

STANLEY SMITH
8 North Center
P. O. Box 308
American Fork, Utah 84003

CRAIG S. COOK
3645 East 3100 South
Salt Lake City, Utah 84109

Attorney for Plaintiff-
Respondent

Attorneys for Defendant-
Appellant

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STANLEY SMITH
8 North Center
P. O. Box 308
American Fork, Utah 84003

Attorney for Plaintiff-
Respondent

JOHN H. McDONALD
370 East 500 South, #100
Salt Lake City, Utah 84111

CRAIG S. COOK
3645 East 3100 South
Salt Lake City, Utah 84109

Attorneys for Defendant-
Appellant

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BRIEF OF APPELLANT

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NATURE OF THE CASE

This is an action commenced by Plaintiff for collection of a debt allegedly owed by Defendant for work performed as an aluminum subcontractor.

DISPOSITION IN LOWER COURT

The lower court entered judgment in favor of Plaintiff and against Defendant in the amount of \$10,000.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the lower court decision and an order awarding judgment, no cause of action, to Defendant.

STATEMENT OF FACTS

The facts in this litigation are extremely simple. The plaintiff Harry Loader was a subcontractor doing business as Loader Aluminum Co. The defendant Scott Construction Corp.

was a general contractor. In 1978 and 1979 Plaintiff performed work on various projects which were being constructed by Defendant as general contractor. (Tr. 33).

After the work was completed a statement would be sent to the defendant with the request to be paid within thirty days. (Tr. 33). The statements were sent on invoices printed with the words "Weather Stopper's, Inc." at the top. Each invoice sent to defendant Scott Construction Corp. had a sticker over the top of the "Weather Stopper's, Inc." printing with the name of "Harry Loader Aluminum Co." (Tr. 41).

The plaintiff was operating the Loader Aluminum Co. as a sole proprietorship during the time this work was performed. (Tr. 36). At the time the work was performed the plaintiff did not have a contractor's license in the State of Utah. (Tr. 38). The plaintiff testified he had no license of his own but was told by his former partner that if Plaintiff needed a license he could work under the partner's license. (Tr. 42).

A short trial was held before the court on December 15, 1981. The court determined that \$10,000 was due and owing to the plaintiff from the defendant. The court rejected Defendant's claim that Plaintiff lacked capacity to bring suit because he was not a licensed contractor. (R. 13, 16). A judgment was entered on February 11, 1982 for \$10,000. (R. 17). It is from this judgment that the present appeal is taken. (R. 18).

ARGUMENT

THE TRIAL COURT ERRED IN RENDERING JUDGMENT ON BEHALF OF PLAINTIFF WHEN HE WAS LEGALLY INCAPACITATED TO BRING SUIT BY NOT OBTAINING A STATE CONTRACTOR'S LICENSE.

At the time the work sued upon was performed Plaintiff was not a licensed contractor in the State of Utah. At trial, defense counsel argued that Plaintiff lacked capacity to bring suit because of this deficiency. (Tr. 47).

The lower court in its Memorandum Decision stated the following:

The court further finds that no question was raised by the defendant as to the authority of the plaintiff to engage in the aluminum siding business, and no complaint as to the material or service rendered having been presented to the court, nor had any defense of capacity been raised, the court finds that any such defense has been waived. (R. 13).

This statement was also reflected in the Findings of Fact of the Court. (R. 15-16). Appellant contends that the court erred in this conclusion because: (1) a plaintiff contractor must prove he is licensed before a suit can be brought and (2) appellant did not waive its defense as to plaintiff's capacity.

As early as 1948 this Court in Olson v. Reese, 200 P.2d 733, 736 (Utah 1948) held that a contract entered into between an unlicensed contractor and a third party was void since Utah law required licensing of contractors for the protection of the public and the failure to procure such license nullified the effect of any contract.

Title 58 Chapter 23 of the Utah Code Annotated requires contractors to be licensed by the State. In Meridian Corp. v. McGlynn/Garmaker Co., 567 P.2d 1110 (Utah 1977) this Court affirmed a lower court's findings that a contractor which was not licensed in Utah could not recover under construction contracts.

Justice Crockett in a dissenting opinion disputed the majority opinion and stated that in cases not involving professional work a contractor should not be denied compensation merely because he is not licensed. Justice Crockett noted: "In this instance, the statute merely provides that one who acts without a license shall be guilty of a misdemeanor. If the legislative intent had been that such contracts were void, the statute should have so declared." Id. at 1111.

Subsequently, in Lignell v. Berg, 593 P.2d 800 (Utah 1979) this Court held that where a general contractor had inadvertently permitted its license to lapse but had supplied a performance bond and had utilized licensed subcontractors, that the owners of the complex were not deprived of the kind of protection licensing statutes were designed to afford and therefore the unlicensed general contractor could bring suit.

Finally, in Motivated Management International v. Finney, 604 P.2d 467 (Utah 1979) this Court reversed a lower court's dismissal of a complaint for failure to state a claim upon which relief could be granted on the basis that the plaintiff was an unlicensed contractor. The Court again noted that

because some of the work was performed in part by licensed contractors it could not be said as a matter of law that plaintiff failed to state a claim.

In 1981 the Utah Legislature substantially amended the state law concerning licensing of contractors. 58 A-1-1, U.C.A., et seq. (Supp. 1953). Among the numerous changes made by the Legislature was a new provision added as §58 A-1-26. It states the following:

Action for Compensation as Contractor Prohibited Without License. No contractor may act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this Chapter without alleging and proving that he was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

The Legislature seemingly took the suggestion of Justice Crockett in the Meridian dissent and specifically provided that no action could be maintained by an unlicensed contractor. The Legislature clearly nullified the exceptions made by this Court in Lignell and Motivated Management International and stated, without exception, that no action by an unlicensed contractor could be maintained. The enactment by the Legislature clearly shows its intention to require licensing before suit may be brought and its disapproval of the 1979 cases by this Court. As such, statutory construction requires full emphasis upon the new amended statute rather than upon this Court's prior decisions. Industrial Commission v. Milka, 410 P.2d 181 (Colo. 1966); Tom P. McDermott, Inc. v. Bennett, 395

P.2d 566 (Okla. 1964).

Thus, there can be no doubt that an unlicensed contractor is precluded from bringing suit upon work performed and therefore lacks legal capacity to be a plaintiff. The amended statute specifically requires the contractor to allege and prove that he was a duly licensed contractor. The burden is clearly upon the plaintiff to show licensing--not upon the defendant to show unlicensing.

This Court in Lignell, supra, stated that the lack of capacity as a plaintiff-contractor could be raised either before or during trial. This Court stated:

The question whether the defense of lack of license, in a suit by an unlicensed contractor, is waived unless raised in a responsive pleading becomes moot in this case. We concur with the Owners, however, that the proof must establish any claimant's standing to maintain his suit, and the issue of the claimant's lack of legal capacity may be raised before or during trial. 593 P.2d at 805. (Emphasis added).

The lower court did not specifically address the validity of the defense raised as to Plaintiff's lack of capacity but instead held that the defendant had waived such defense by failing to assert it prior to trial. This decision was clearly erroneous. It was part of the plaintiff's prima facie case to establish that he was indeed a licensed contractor in the State of Utah, and therefore had capacity to bring an action against the defendant. As noted earlier, it was not Defendant's obligation to prove the non-existence of the license.

Plaintiff obviously was aware of the requirement of

licensing since he had asked a former partner whether he could use the former partner's license if one was needed. Of course, no such use of that license was ever attempted but the conversation shows Plaintiff's knowledge of the licensing requirements.

The Utah Legislature for the protection of the public has imposed a stringent requirement upon contractors to be licensed or to face the consequences which, in this case, results in the inability to collect a \$10,000 alleged debt. This policy is in harmony with the previous cases of this Court decided prior to 1979 and while such policy may create hardships on contractors the counterveiling policy of protecting the public from unlicensed contractors has been deemed by the Legislature to be more important and thus a powerful incentive for licensing has been given.

CONCLUSION

The lower court clearly erred in refusing to accept the defense of Plaintiff's lack of capacity raised by the defendant during trial. Since the facts are undisputed that Plaintiff was in fact unlicensed as the time the work was performed this Court, as a matter of law, should remand this matter to the lower court for entry of judgment in favor of Defendant.

Respectfully submitted.

JOHN H. McDONALD
370 East 500 South, #100
Salt Lake City, Utah 84111

CRAIG S. COOK
3645 East 3100 South
Salt Lake City, Utah 84109

MAILING CERTIFICATE

I hereby certify that I mailed two copies of the foregoing Brief of Appellant to Stanley Smith, 8 North Center, P. O. Box 308, American Fork, Utah 84004 this 9th day of July, 1982.


