



## **CONTRACTOR LICENSING LAW**

### **SUPPLEMENTAL MATERIALS**

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## NEW CASES DECIDED IN 2012

1. *Montgomery Sansome LP v. Rezai (2012) 204 Cal.App.4th 786, 139 Cal.Rptr.3d 181*

**Party to contract not necessarily barred from maintaining lawsuit despite slight difference between name of licensed entity and name used in the construction contract.**

A limited partnership was registered with the California Secretary of State as “Montgomery-Sansome, LP” but the company obtained a contractor’s license in the name of “Montgomery Sansome LTD”. Later, the principals of the company filed a fictitious business name statement, listing the fictitious business name “Montgomery Sansome Ltd Lp.” and stating that the business was conducted as a general partnership. Montgomery Sansome Ltd Lp. subsequently contracted with property owners to remodel their apartment building. When property owners terminated the contract, Montgomery Sansome Ltd Lp. filed suit for, among other things, breach of contract. Property owners moved for summary judgment, claiming that Bus & Prof. Code §7031 barred Montgomery Sansome Ltd Lp. from maintaining the instant lawsuit because it was not a licensed entity. The trial court granted the motion for summary judgment. REVERSED. The Court of Appeals concluded that there was a triable issue of material fact as to whether the Montgomery Sansome Ltd Lp. was a separate entity from the licensed entity, Montgomery Sansome LTD. The court stated that if the contracting entity is the same entity that held the license, then the use of slightly different name in the contract documents would not bar recovery. The court noted that: (i) the fictitious business name statement for Montgomery Sansome Ltd Lp. included the same business address as Montgomery Sansome LTD; (ii) the statement reflected that Montgomery Sansome Ltd Lp. began transacting business on the same date the CSLB issued a license to Montgomery Sansome LTD; and (iii) even though records of the CSLB and the Secretary of State were inconsistent, they appeared to refer to a single limited partnership.

2. *Twenty-Nine Palms Enterprises Corp. v. Bardos (2012) 210 Cal.App.4th 1435, 149 Cal.Rptr.3d 52*

**Corporate officer could not use license to operate as contractor in his individual capacity when the license was already used to qualify a corporation.**

Twenty-Nine Palms Enterprises Corporation, a tribal corporation (“Palms”), hired Paul Bardos doing business as Cadmus Construction Co., (“Cadmus”) to perform work on a casino construction project. At the time, neither Bardos nor Cadmus had a contractor’s license in their own name. Upon discovering that Cadmus did not hold its own license, Palms sued for disgorgement, under California Business and Professions Code section 7031, of the entire amount it paid to Cadmus for the work. Cadmus argued that was adequately licensed because it was operating under the contractor’s license issued to Bardos Construction, Inc. (“BCI”). Bardos was the responsible managing officer of BCI. The trial court granted summary judgment in favor of Palms, finding that Cadmus did not have a contractor’s license at the time it performed the construction work. AFFIRMED. Cadmus claimed that since the work was performed on tribal lands, section 7031 was inapplicable. The Court of Appeal held that only Palms could assert a claim of sovereign immunity and that California state laws do not govern on federally recognized tribal lands. Cadmus lacked standing to make a sovereign immunity argument. The Court also rejected Cadmus’ argument that the license issued to BCI allowed him to operate as a licensed contractor because he was the officer that held the license to qualify BCI. BCI, as a corporation, was a separate legal

entity from its officers and shareholders and Bardos' status as the responsible managing officer did not entitle either Bardos or Cadmus to operate under that license. Lastly, the Court held that Cadmus did not "substantially comply" with section 7031 because, at the time Cadmus entered into the contract with Palms, Bardos knew that neither he nor Cadmus was licensed and made no effort to apply for a license until after the project was completed.

## NEW LAWS PASSED IN 2012

1. Assembly Bill 2237 – approved by Governor on September 19, 2012

Amends California Business and Professions Code section 7026.1

Existing law defines the term "contractor" to include, among others, any person or **consultant** to an owner-builder who undertakes, offers to undertake, or submits a bid to construct a building or home improvement project. However, under the previous version of section 7026.1, the term "consultant" was not defined. This bill defines "consultant", for purposes of the definition of a contractor, to include "a person, other than a public agency or an owner of privately owned real property to be improved, who either:

- a. Provides or oversees a bid for a construction project; OR
- b. Arranges for and sets up work schedules for contractors and subcontractors and maintains oversight of a construction project.

2. Assembly Bill 2554 – Approved by Governor on July 10, 2012

Amends California Business and Professions Code sections 7011.4 and 7106.5

Existing law provides for the licensure and regulation of contractors by the Contractors' State License Board. Under existing law, there is an enforcement unit within the Board with specified responsibilities aimed towards the rigorous enforcement of the California Contractors' License Law. AB 2554 simply amends Section 7011.4 renames the "enforcement unit" as the "enforcement division."

Under existing law, the expiration, cancellation, forfeiture, suspension, or voluntary surrender of a license does not deprive the registrar of jurisdiction to proceed with, among other things, any investigation or disciplinary proceeding against the license. AB 2554 specifies that **revocation** of a license also does not deprive the board of that jurisdiction.

3. Assembly Bill 2570 – Approved by the Governor on September 25, 2012

Adds section 143.5 to the California Business and Professions Code

Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency. Existing law also prohibits a

physician and surgeon from including specified provisions in an agreement to settle a civil dispute arising from his or her practice.

Section 143.5 prohibits a licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs (which includes California contractors) or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program, except as specified. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. Section 143.5 also prohibits such a board, bureau, or program from requiring its licensees in a disciplinary action, that is based on a complaint or report that has been settled in a civil action, to pay additional moneys to the benefit of any plaintiff in the civil action.

4. Assembly Bill 2219 – Approved by the Governor on September 19, 2012

Amends California Business and Professions Code section 7125

Existing law required every licensed contractor, or applicant for licensure, to have on file at all times with the board a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, or a statement certifying that he or she has no employees and is not required to obtain or maintain workers' compensation insurance. Existing law, **until January 1, 2013**, required a contractor with a C-39 roofing classification to obtain and maintain workers' compensation insurance even if he or she had **no** employees.

Section 7125, as amended, extends the operation of these provisions **indefinitely** and now requires the current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance to be in the **applicant's or licensee's business name**.

Under existing law, for any license that, on January 1, 2011, was active and included a C-39 classification but for which a valid Certificate of Workers' Compensation or Certification of Self-Insurance had not been received by the registrar of contractors, the registrar was required, in lieu of suspending the license, to **remove** the C-39 classification from the license. Additionally, the CSLB was required to suspend any license that, after January 1, 2011, was active and had the C-39 classification removed pursuant to the above-described provisions, if the licensee was found by the registrar to have employees and to lack a valid Certificate of Workers' Compensation or Certification of Self-Insurance.

Section 7125, as amended, change these dates to January 1, 2013, and extends the operation of these provisions **indefinitely**.

5. Senate Bill 323 – Approved by the Governor on September 21, 2012

This bill repeals the Beverly-Killea Limited Liability Act (Corp. Code §17000 *et seq.*), effective January 1, 2014, and enacts the California Revised Limited Liability Company Act (Corp. Code § 17701.01 *et seq.*) (the "Act").

The Act authorizes operating agreements to be oral, in a record, *implied*, or any combination thereof, whereas under previous law an operating agreement was limited to either “written or oral” agreements.

The Act distinguishes between manager-managed companies and member-managed companies for purposes of defining the scope of a member’s agency and imposing fiduciary duties only on persons in control of a limited liability company and specifically limiting the duties of members in a manager-managed company.

Effective, January 1, 2014, any individual who signs a record authorized or required to be filed under the Act, (e.g., Articles of Organization and Statements of Information) must affirm *under penalty of perjury* that the information stated in the record is accurate.

Existing law does not specifically provide for a member to dissociate from a limited liability company. Sections 17706.2 and 17706.3, effective January 1, 2014, specify occurrences which result in dissociation and the effects of such dissociation.