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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TRI-STATE BUILDING MATERIALS, INC., *Plaintiff/Appellee*,

v.

HESKETT HOMES, LLC, et al., *Defendants/Counter-Claimants/Appellees*,

CAROLYN BLEVINS, *Defendant/Counter-Defendant/Appellant*.

No. 1 CA-CV 16-0464
FILED 12-19-2017

Appeal from the Superior Court in Mohave County
No. B8015CV201404202
The Honorable Richard Weiss, Judge

AFFIRMED IN PART; REVERSED IN PART

COUNSEL

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Paul J. McMurdie and Judge Patricia A. Orozco¹ joined.

S W A N N, Judge:

¶1 A homeowner engaged an unlicensed contractor to manage a remodel project at her residence. In connection with the project, the unlicensed contractor ordered materials from a supplier, who was not paid. The supplier prevailed at trial against the homeowner on an unjust enrichment claim, and the unlicensed contractor prevailed against the homeowner on a contract claim for the value of the unpaid-for materials. We affirm the judgment for the supplier because reasonable evidence established that the homeowner failed to fully pay the unlicensed contractor but installed the materials at her home. We reverse the judgment for the unlicensed contractor based on A.R.S. § 32-1153, because the materials order was part of contracting work that required a license.

FACTS AND PROCEDURAL HISTORY

¶2 In mid-2012, Carolyn Blevins hired Joe Lee Heskett, the sole member and qualifying party of Heskett Homes, LLC, in connection with a remodel project at her residence. At that time, and at all relevant times thereafter, Heskett Homes' contracting licenses were suspended for non-renewal.

¶3 Under the parties' oral contract, Heskett was to supervise the project, work with subcontractors, purchase materials, and manage billing and payment. Blevins was to provide draw payments to Heskett to fund the construction, and she was to compensate Heskett at the rate of 7% of the total expended for labor and materials.

¶4 Heskett began work in accordance with the parties' agreement, and Blevins provided multiple payments to him over the course of several months. When Heskett obtained doors and windows for the

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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project from Tri-State Building Materials, Inc., Tri-State billed Heskett Homes for the materials on a preexisting open account that Heskett had personally guaranteed.

¶5 In December 2012, Heskett requested an additional payment from Blevins, which he asserted was needed to pay for, among other things, doors and windows. Blevins requested an accounting (as she had previously without receiving a response). Heskett eventually provided a handwritten list stating amounts due for various items, including doors and windows. After review, Blevins concluded that she had already provided Heskett sufficient funds to cover all costs. Blevins terminated Heskett, told him that he was no longer allowed on her property, and filed a complaint with the state Registrar of Contractors that resulted in an administrative decision imposing penalties against Heskett based, in part, on a finding that he had contracted without a license.

¶6 Blevins paid several subcontractors directly for work performed that went unpaid during Heskett's tenure. But when Tri-State demanded payment from Heskett and Blevins, neither paid. And Blevins thereafter installed Tri-State's materials at her residence (with the exception of several items that she returned to Tri-State after she decided not to use them).

¶7 Tri-State brought an action against Heskett Homes and Heskett for breach of the open-account contract and personal guaranty (or, in the alternative, breach of fiduciary duty), and against Blevins for unjust enrichment. The Heskett defendants then asserted a cross-claim against Blevins for breach of contract, breach of the covenant of good faith and fair dealing, and unjust enrichment. The matter proceeded to compulsory arbitration that concluded in Tri-State's favor on the complaint as against all defendants, and in the Heskett defendants' favor on the cross-claim against Blevins. Blevins appealed the arbitration award, and the superior court conducted a bench trial.

¶8 The parties stipulated that Tri-State was owed \$26,740 for materials delivered to Blevins's residence, and the Heskett defendants stipulated to the entry of judgment against them and in favor of Tri-State for that amount. But Blevins argued that she bore no liability to Tri-State because the elements of unjust enrichment were not satisfied, and that she bore no liability to the Heskett defendants because A.R.S. § 32-1153 barred the cross-claim in view of those defendants' lack of licensure. The superior court rejected Blevins's defenses. The court entered judgment in favor of Tri-State and against Blevins and the Heskett defendants, jointly and

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severally, for \$23,327.² On the cross-claim, the court entered judgment in favor of the Heskett defendants and against Blevins for breach of contract, assessing damages of \$23,002 plus attorney's fees and finance charges accruing under the open-account agreement.

¶9 Blevins appeals.

DISCUSSION

I. TRI-STATE WAS ENTITLED TO JUDGMENT AGAINST BLEVINS FOR UNJUST ENRICHMENT.

¶10 We first address Blevins's challenge to the superior court's entry of judgment for Tri-State on its unjust enrichment claim. We review the court's factual findings for clear error, and we do not reweigh the evidence. *In re the General Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 198 Ariz. 330, 340, ¶ 25 (2000). We review questions of law de novo. *Enterprise Leasing Co. of Phoenix v. Ehmke*, 197 Ariz. 144, 148, ¶ 11 (App. 1999).

¶11 An unjust enrichment claim requires proof of an enrichment, an impoverishment, a connection between the enrichment and the impoverishment, the absence of justification for the enrichment and impoverishment, and the absence of a remedy at law. *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314, 318, ¶ 10 (App. 2012). A property owner is not unjustly enriched by labor or materials provided by an unpaid subcontractor if the owner fully paid the owner's obligation to the general contractor. *Id.* at ¶ 12. But if the owner has not fully paid the general contractor, the subcontractor may recover from the owner on an unjust enrichment theory. *Id.* at 318-19, ¶ 12.

¶12 Blevins does not dispute that she was enriched, and Tri-State impoverished, by Tri-State's provision of materials that she installed at her residence and for which Tri-State was not paid. She contends, however, that the enrichment and impoverishment were justified because she provided sufficient funds to Heskett, against whom Tri-State had a legal

² The Heskett defendants were ordered solely liable for the remaining \$3,314 of the total owed to Tri-State, because of accounting errors Heskett made. The Heskett defendants were also ordered to pay finance charges and attorney's fees to Tri-State.

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remedy.³ We reject Blevins's arguments. First, we discern no clear error in the superior court's determination that Blevins failed to fully pay Heskett. Reasonable evidence supports that conclusion, and we will not reweigh the evidence. Second, Tri-State's ability to pursue contract claims against the Heskett defendants has no bearing on the unjust enrichment claim against Blevins. See *Loiselle v. Cosas Mgmt. Grp., LLC*, 224 Ariz. 207, 211, ¶ 14 (App. 2010) (holding that the absence of a remedy at law, for purposes of unjust enrichment, means only the absence of a remedy at law against the unjust-enrichment defendant).

II. THE HESKETT DEFENDANTS' CROSS-CLAIM IS PRECLUDED UNDER A.R.S. § 32-1153.

¶13 We next address Blevins's contention that the Heskett defendants' cross-claim is barred under A.R.S. § 32-1153. Section 32-1153 provides:

No contractor as defined in § 32-1101 shall 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 the contracting party whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

The parties do not dispute that Heskett was not licensed at relevant times under § 32-1153, and they do not now dispute that Heskett acted as a contractor. The sole question presented on appeal is whether the Heskett defendants sought recovery "for collection of compensation for the performance of any act for which a license is required."

¶14 "[T]he purpose of § 32-1153 is to protect the public from unscrupulous, unqualified, and financially irresponsible contractors." *Aesthetic Prop. Maintenance, Inc. v. Capitol Indem. Corp.*, 183 Ariz. 74, 77 (1995). Under the statute, consumer protection generally takes precedence over equitable considerations. See *Chickering v. George R. Ogonowski Constr. Co.*, 18 Ariz. App. 324, 326 (1972). A licensed contractor who performs

³ Though Blevins argued in her opening brief that Tri-State had an adequate remedy at law because it could have liened her property, Blevins conceded in her reply brief that Tri-State had no lien right. We agree that under A.R.S. § 33-1002(B), Tri-State had no ability to lien Blevins's property.

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license-regulated work outside the scope of its license may, however, recover for the portion of the work covered by the license. *Chavira v. Armor Designs of Delaware, Inc.*, 238 Ariz. 48, 49-50, ¶¶ 10-11 (App. 2015). And even an unlicensed contractor may sometimes recover. In some circumstances, an unlicensed contractor may bring a claim if it substantially complied with license requirements. See *Ariz. Comm. Diving Servs., Inc. v. Applied Diving Servs., Inc.*, 212 Ariz. 208, 210, ¶¶ 9-11 (App. 2006). And naturally, an unlicensed contractor's claim is not barred if it is based on acts for which no license is required. See *Butch Randolph & Assocs. v. Int'l Fidelity Ins. Co.*, 212 Ariz. 550, 551-53, ¶¶ 7-15 (App. 2006) (holding that unlicensed contractor who merely supplied materials and was statutorily exempt from licensing requirement was not barred from recovery against payment bond).

¶15 The Heskett defendants contend that because the cross-claim sought to recoup only the cost of the materials ordered from Tri-State, and not any part of Heskett's percentage fee, the cross-claim related solely to a non-license-dependent act: placing an order for materials. But contracting work, which requires a license under A.R.S. § 32-1102, may include the provision of construction materials (unless exempted by § 32-1121, which does not apply on this record). In *Barassi v. Matison*, we explained: "A person who constructs, alters or improves any building of necessity agrees to provide the materials in connection with such work. Therefore, for the purposes of the licensing statute, the materials are not something separate for which a person can recover if he does not have the required license." 134 Ariz. 338, 341 (App. 1982). Further, § 32-1101(B) specifies that even a person who assumes a wholly supervisory role over a construction project is engaged in contracting: "'Contractor' includes . . . consultants representing themselves as having the ability to supervise or manage a construction project for the benefit of the property owner, including the hiring and firing of specialty contractors, the scheduling of work on the project and the selection and purchasing of construction material." (Emphasis added.) See also Stephen G. Walker et al., *State-by-State Guide to Architect, Engineer and Contractor Licensing* § 5.45 (2017) ("Construction management . . . can refer to a general contractor who essentially subcontracts all or virtually all the work on the project, reserving for itself only the overall management of the effort. Such a general contractor, notwithstanding the limited scope of its work, is a contractor in the ordinary sense and is subject to all the ordinary licensing requirements."). Heskett selected and purchased materials from Tri-State under his agreement with Blevins to supervise and manage the remodel project for a percentage fee. Heskett acted as a general contractor, and the materials order was part and parcel of that role. On this record, § 32-1153 applies to

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bar the cross-claim. The superior court erred by entering judgment for the Heskett defendants.

CONCLUSION

¶16 For the reasons set forth above, we affirm the entry of judgment for Tri-State but we reverse the entry of judgment for the Heskett defendants. We deny all parties' requests for attorney's fees on appeal under A.R.S. § 12-341.01(A). Though Blevins prevails on appeal as against the Heskett defendants, we deny her request for fees in exercise of our discretion. And though Tri-State prevails on appeal as against Blevins, Tri-State's claim does not arise out of a contract. Nor do we find that Tri-State is entitled to fees under the other authorities it cites, Ariz. R. Civ. P. 77(h) and ARCAP 27.



AMY M. WOOD • Clerk of the Court
FILED: AA