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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANITA GOLDSTEIN et al., Plaintiffs and Respondents, v. BARAK CONSTRUCTION et al., Defendants and Appellants.	B196551 (Los Angeles County Super. Ct. No. SC 089043)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Neidorf, Judge. Affirmed.

The Dodell Law Corporation, Herbert Dodell and Perry R. Fredgant for Defendants and Appellants.

No appearance for Plaintiffs and Respondents.

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* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts 1.B., 1.C., and 2 of the Discussion.

Barak Construction (Barak) and Ami Weisz (sometimes hereafter appellants) appeal from (1) the trial court's order granting the application of respondents Anita Goldstein and Eric Mizrahi for a right to attach order and order for issuance of writ of attachment against Barak and (2) its order directing Weisz not to "sell, encumber, or diminish the value of his residence" until the action is adjudicated or further order of the court. We affirm.

FACTS[1]

Respondents own a residence in Los Angeles, California. In June 2004, Weisz represented to respondents that he was personally engaged in the business of residential construction and remodeling and that Barak was "his" company. Weisz also stated that both he and Barak were licensed California building contractors. In reliance on these statements, respondents entered into a contract with Barak for an addition to, and a remodeling of, their home. The work to be performed under the contract included demolition and disposal of an existing garage, excavation and pouring of concrete foundations for a new structure, furnishing structural steel for the new construction, erecting the framing and roof of the new structure and plumbing, electrical, heating, air

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1 Respondents have failed to file any brief. Although it is the appellant's duty to show error, the respondent has a corresponding obligation to aid the appellate court in sustaining the judgment or order. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 612, p. 644.) We may, in our discretion, treat respondents' failure to file a brief as an acknowledgement that the appeal is well taken and reverse the trial court's orders. (*Bennett v. California Custom Coach, Inc.* (1991) 234 Cal.App.3d 333, 338; see Cal. Rules of Court, rule 8.220(a)(2).) Notwithstanding respondents' dereliction of duty, we have undertaken to examine the record on the basis of appellants' brief, and review the orders for prejudicial error. (*Ibid.*)

The facts are set forth in accordance with fundamental rules of appellate review, including that all evidence must be viewed in the light most favorable to the respondent and in support of the judgment or orders from which the appeal is taken. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; see generally *Foreman v. Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

conditioning, interior finishing, painting and other work. The total cost for all material and labor was $363,000.

Neither Barak nor Weisz was a licensed contractor at the time the contract was signed on June 18, 2004. After the contract was executed, Barak commenced working on the project. Three months later, on September 17, 2004, Barak obtained a contractor's license for the first time.

Respondents allegedly paid Barak the sum of $362,660.50 under the contract. However, Barak allegedly abandoned the job before the work was completed, leaving respondents with a home that was unfinished and riddled with construction defects.

Respondents filed the present action against Barak, Weisz and others in March 2005. As against both appellants, the verified complaint sought recovery for fraud, negligent misrepresentation, concealment, negligence, breach of implied warranties, breach of contract and unfair business practices. The complaint also sought recovery of money paid to an unlicensed contractor as against Barak.

Appellants filed a verified answer to the complaint. Appellants admitted that Barak entered into a contract "relating to the construction of an addition to, and remodeling of, [respondents'] residence." The answer admitted that a general building contractor license was not issued to Barak until September 17, 2004, and neither Barak nor Weisz held a California building contractor's license at the time the contract with respondents was executed. Appellants also admitted in their answer that Weisz was an officer, director and majority shareholder of Barak and alleged that respondents made payments to Barak totaling $362,629.50. They further admitted that Barak never held a contractor's license prior to entering into the contract with respondents.

After appellants filed their verified answer, respondents filed applications for a right to attach order and order for issuance of a writ of attachment against Barak and Weisz. Respondents asked for an attachment in the amount of $385,388, which included $362,660.50 respondents allegedly paid Barak, estimated costs of $643.00 and allowable attorney fees of $22,084.50. Respondents proffered a declaration testifying to the basic facts as related, *ante*. The declaration further averred that respondents were obliged to

retain attorneys to seek recovery of the amounts they paid under the contract, and they incurred attorney fees of $22,084.50 and costs of $643.00 in prosecuting the case.

Appellants filed a written opposition to the applications. The opposition raised four contentions: (1) respondents' claim was not based on a contract; (2) the amount was not fixed or readily ascertainable; (3) respondents had not proved the probable validity of their claim by a preponderance of evidence; and (4) there was no legal or factual basis for allowing an attachment against Weisz individually. Appellants further took issue with the amount sought to be secured by the attachment, arguing that: (1) over $80,000 of the funds paid Barak was for "extras" separate from the subject contract; (2) $34,800 of the contract was for allowances paid directly by respondents to third parties; (3) Barak was seeking an offset for work performed and materials provided but not paid for; and (4) respondents had not apportioned fees and costs among multiple defendants. The opposition specifically did not include notice of any intention to claim any exemption of property from attachment.

Weisz filed a declaration stating that he had incorporated Barak on April 17, 2003, and Barak has been an active corporation in good standing since then. Weisz asserted Barak had been adequately capitalized and had maintained a separate corporate existence. He admitted the facts of the contract but asserted the contract price included $34,800.00 in allowances that respondents paid third parties. He stated that respondents had an unpaid balance on the contract of $56,470. Weisz admitted that Barak had not completed respondents' project, but he claimed it was due to the "wrongful conduct" of respondents. Also, he contended, the project included "extras" agreed to by respondents in the amount of $93,150.60, of which respondents paid $90,899.50, leaving the sum of $2,251.10 of "extras" unpaid. According to Weisz, $81,470.13 of the "extras" paid for by respondents was requested and performed after Barak obtained its contractor's license.

Weisz declared that Barak had submitted an application for a contractor's license in mid-2003, and Aharon Vaknin, then a shareholder of Barak, had taken the contractor's license examination in March or April 2004. Vaknin failed to pass all the portions of the

examination. It was not until August 2004 that Vaknin was able to retake and pass the examination, after which a license was issued to Barak on September 17, 2004.[2]

Weisz claimed Barak performed "very little" work on respondents' project, primarily site preparation and demolition, prior to issuance of the license. He stated the "majority" of the work under the contract occurred after Barak had its license. He denied ever telling respondents he or Barak had a contractor's license and asserted the subject of licensing never came up in his discussions with respondents. Weisz contended on information and belief that respondents "knew" Barak did not have a contractor's license when they entered into the contract. He stated he advised respondents at the time of contracting that he would engage a licensed onsite project supervisor or manager, and Barak did in fact engage a bonded and licensed general building contractor other than Vaknin to oversee the project, both before and after Barak had secured its own license.

After a hearing, the trial court granted respondents' application for a right to attach order and order for issuance of a writ of attachment solely against Barak in the amount of $385,388 upon the filing of a $10,000 undertaking.

The court denied respondents' application as to Weisz individually, but it ordered Weisz not to sell, encumber, or diminish the value of his residence in Los Angeles until further order of the court.[3] The court specifically found there was a basis in alter ego for its ruling and respondents' applications were based on breach of contract.

Appellants timely appealed the court's orders.

DISCUSSION

Under Code of Civil Procedure section 483.010, a prejudgment attachment may issue only if the claim sued upon is (1) a claim for money based upon a contract, express

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[2] The verified complaint alleged on information and belief that Vaknin never went to the job site, negligently failed to supervise any of Barak's work and was not a bona fide responsible managing officer of Barak but merely "rented" his license to Barak.

[3] As discussed, *post*, the court entered this order against Weisz in lieu of issuing a right to attach order.

or implied; (2) of a fixed or readily ascertainable amount not less than $500; (3) either unsecured or secured by personal property, not real property (including fixtures); and (4) commercial in nature. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶ 9:858, p. 9(II)-69 (rev. #1 2007).) The plaintiff must establish "the probable validity of the claim upon which the attachment is based." (Code Civ. Proc., § 484.090, subd. (a)(2); see also *Bank of America v. Salinas Nissan, Inc.* (1989) 207 Cal.App.3d 260, 271.) "A claim has 'probable validity' where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim." (§ 481.190; see also *Loeb & Loeb v. Beverly Glen Music, Inc*. (1985) 166 Cal.App.3d 1110, 1120; see *Kemp Bros. Construction, Inc. v. Titan Electric Corp.* (2007) 146 Cal.App.4th 1474, 1476.) A defendant who opposes a right to attach order must give notice of his objection "accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised." (§ 484.060, subd. (a).) The defendant may make a claim of exemption with respect to his property in the opposition. (§ 484.070.)

The amount to be secured by an attachment is based on "[t]he amount of the defendant's indebtedness claimed by the plaintiff" plus an estimated amount for allowable attorney fees and costs authorized by the court. (Code Civ. Proc., §§ 483.015, subd. (a)(1), (2), 482.110.) That amount must be reduced by the amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint, or raised as a defense, if the claim is one upon which an attachment could be issued. (§ 483.015, subd. (b)(2), (3).)

At the hearing of an application for a right to attach order, the court shall consider the showing made by the parties appearing and shall issue such an order if it finds (1) the claim upon which the attachment is based is one upon which an attachment may be issued; (2) the plaintiff has established the probable validity of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based; and (4) the amount to be secured by the attachment is greater than zero. (Code Civ. Proc., § 484.090, subd. (a).)

The court's determinations shall be made upon the basis of the pleadings and other papers in the record. (§ 484.090, subd. (d); *Loeb & Loeb v. Beverly Glen Music, Inc.*, *supra*, 166 Cal.App.3d at p. 1120 ["the court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation"].)

On appeal from an attachment order, we review the record for substantial evidence to support the trial court's factual findings. (*Bank of America v. Salinas Nissan, Inc.*, *supra*, 207 Cal.App.3d at p. 273.) We apply the same evidentiary standard to an attachment hearing decided on affidavits and declarations as to a case tried on oral testimony. (*Lorber Industries v. Turbulence, Inc.* (1985) 175 Cal.App.3d 532, 535; *Loeb & Loeb v. Beverly Glen Music, Inc.*, *supra*, 166 Cal.App.3d at p. 1120.) We will not disturb a determination upon controverted facts unless no substantial evidence supports the court's determination. (*Bank of America v. Salinas Nissan, Inc.*, *supra*, at p. 273.)

1. Writ of Attachment Against Barak

Appellants contend the trial court erred in granting the right to attach order and in issuing a writ of attachment as to Barak on several grounds: (1) the record does not support a finding that the claim is one upon which attachment can be issued since respondents sought attachment based on a "punitive" statute; (2) the claim was neither fixed nor readily ascertainable; (3) respondents did not establish the probable validity of their claim; (4) Barak is entitled to retain all compensation paid to it for work performed after it was licensed; and (5) Barak is entitled to retain all compensation paid for "extras." We disagree.

A. The Claim Is One on Which Attachment Can Issue

Appellants assert the claim is not one upon which attachment can be issued because respondents sought attachment based upon a "punitive" statute, the Contractors' State License Law, Business and Professions Code section 7000[4] et seq. (CSLL), rather than any express or implied contract. Without citing any cases and without analysis,

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[4] All further statutory references are to the Business and Professions Code unless indicated otherwise.

appellants assert that attachment is not available when the application for right to attach is based on a cause of action brought under the CSLL. We hold a claim brought under the CSLL against an unlicensed contractor may appropriately form the basis for a right to attach order since an agreement for the performance of services lies at the heart of such a claim.

The CSLL embodies a comprehensive legislative scheme governing the construction business in California. The CSLL manifests a strong public policy favoring protection of the public against unscrupulous and incompetent contractors. Our Supreme Court has explained that "[t]he purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]" (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 (*Hydrotech*); see also *Construction Financial v. Perlite Plastering Co.* (1997) 53 Cal.App.4th 170, 176-177 (*Construction Financial*).) It has long been established that the provisions of section 7031 represent "a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties." (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 151 (*Lewis & Queen*).) Section 7031 applies "despite injustice to the unlicensed contractor." (*Hydrotech*, *supra*, at p. 995.) Accordingly, such provisions apply even when a person for whom work was performed knew the contractor was unlicensed. (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 424 (*MW Erectors*); *Hydrotech*, *supra*, 52 Cal.3d at p. 997; *Construction Financial*, *supra*, 53 Cal.App.4th at p. 181.)

Under section 7031, subdivision (b), except as provided in subdivision (e),[5] "a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract." Respondents provided evidence that Barak was unlicensed at the time the home improvement contract with respondents was executed, and performance under the contract commenced while it was still unlicensed. The record also showed it was not until several months afterwards that Barak obtained its license. Respondents presented a prima facie case under section 7031, subdivision (b), justifying the trial court in issuing a right to attach order upon their claim.

A claim under section 7031, subdivision (b) is fundamentally contractual in nature since it is based on an unlicensed contractor's agreement with the beneficiary to provide services, and the beneficiary's agreement to pay for same. Had the unlicensed contractor not received payment for unlicensed services, the beneficiary would have no cause of action to recoup such payments under section 7031, subdivision (b). The trial court therefore did not err in ruling respondents' claim was contractual in nature.

B. The Claim Is Sufficiently Fixed and Ascertainable[*]

Appellants claim the attachment amount cited in respondents' application and granted by the court is not supported by the evidence. We disagree.

"[A]n attachment will lie upon a cause of action for damages for a breach of contract where the damages are readily ascertainable by reference to the contract and the basis of the computation of damages appears to be reasonable and definite. [Citations.] The fact that the damages are unliquidated is not determinative. [Citations.] But the

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[5] Subdivision (e) of section 7031 allows a court to determine there has been substantial compliance with licensure requirements upon a specific showing. There is no contention here that the exception under subdivision (e) is even remotely applicable. (See *MW Erectors*, *supra*, 36 Cal.4th at pp. 431-432 [discussing § 7031, former subd. (d)].)

[*] See footnote, *ante*, page 1.

contract sued on must furnish a standard by which the amount due may be clearly ascertained and there must exist a basis upon which the damages can be determined by proof." (*Force v. Hart* (1928) 205 Cal. 670, 673 [interpreting prior statute]; see also *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 540.)

Respondent Anita Goldstein submitted a declaration to the court declaring she and her husband entered into a contract with Barak and Weisz whereby Barak and Weisz would perform remodel construction work on respondents' property. The declaration also stated that pursuant to the contract respondents paid Barak and Weisz the sum of $362,660.50. Goldstein also declared she was unaware of any viable defenses appellant might have to respondents' claim. She further declared respondents were obliged to hire attorneys to pursue the claim and incurred legal fees of $22,084.50 and costs of $643.00 in prosecuting the case. Appellants' opposition, among other things, claimed other defendants were involved in the action and respondents had failed to apportion fees and expenses among defendants. In reply to the opposition, attorney Nancy Hartzler declared she was familiar with the billing matters in the case and over 95 percent of the fees and costs of the case were based on matters directly related to prosecuting the case against Barak and Weisz. On the basis of conflicting evidence, the trial court did not abuse its discretion in granting a right to attach order in the amount of $385,388.00.[6]

Appellants assert that the attachment writ contained sums paid directly to third parties, not Barak, for labor or materials. However, the evidence with respect to payment of such sums was in conflict, and the trial court was the arbiter of credibility on this issue.

Appellants also argue that the "vast majority" of the money paid Barak was not retained by it but was spent on respondents' home addition and remodeling for material and labor or for overhead expenses, such as office administration and insurance. Appellants also contend less than $25,000 of the amounts respondents paid constituted profit. Section 7031, subdivision (b) makes no allowance for deduction of such expenses.

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6 We discuss, *post*, appellants' claim that a portion of the amount paid by respondents was for "extras."

The statute allows a person who has paid an unlicensed contractor to recover "all compensation *paid to the unlicensed contractor*" for the performance of any act or contract. Draconian as it might seem, the Legislature has made no provision for offsets or deductions for amounts not retained or for which the unlicensed contractor has acted merely as a "conduit" for payment. The Supreme Court has declared that "the courts may not resort to equitable considerations in defiance of section 7031." (*Lewis & Queen*, *supra*, 48 Cal.2d at p. 152; *MW Erectors*, *supra*, 36 Cal.4th at p. 423 ["We have previously disregarded equitable considerations even though the result was to permit another entity to retain sums otherwise due to an unlicensed contractor"].)

C. Respondents Established the Probable Validity of Their Claim[*]

Appellants contend the evidence submitted by respondents in support of their attachment applications in general was "incompetent," "inadmissible," "self-serving" or "argumentative." They further contend respondents' evidence was controverted by the declaration of Weisz in support of appellants' opposition to the applications for a right to attach order. The arguments are meritless.

Appellants failed to object to the evidence in the trial court and are deemed to have waived the objection. (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1139 [defendant waived objections to evidence by failing to raise claim in trial court]; *Platzer v. Mammoth Mountain Ski Area* (2002) 104 Cal.App.4th 1253, 1260-1261 [party must object in the trial court, " 'specifically stating the grounds of the objection, . . . directing the objection to the particular evidence that the party seeks to exclude' "]; *Atkins v. Strayhorn* (1990) 223 Cal.App.3d 1380, 1390 [party must make clear and specific objection in trial court].) A finding may not be set aside, or a decision based thereon reversed, due to the erroneous admission of evidence absent a clear and timely objection or motion to exclude or strike the evidence. (Evid. Code, § 353.)

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[*] See footnote, *ante*, page 1.

Even if appellants had properly and timely asserted objections to respondents' evidence, they cite no case authority supporting their claim that the court improperly considered respondents' evidence. We find the court did not abuse its discretion in considering such evidence.

We further reject appellants' argument that the court erred in granting relief because respondents' evidence was controverted by Weisz's declaration in support of appellants' opposition to the applications. The trial court appropriately exercised its discretion to disbelieve Weisz. (*Bank of America v. Salinas Nissan, Inc.*, *supra*, 207 Cal.App.3d at p. 273.)

Appellants additionally claim that, notwithstanding section 7031, subdivision (b), respondents' voluntary payment under the contract precludes any action to recoup such payments. They rely on a footnote in *MW Erectors*, in which the court stated: "[N]othing in the statute precludes the satisfied beneficiary of such work from paying for it voluntarily. Business considerations may persuade the beneficiary to ignore license lapses it deems insignificant, and to continue compensating the contractor, in order to avoid disruption of progress on the project." (*MW Erectors*, *supra*, 36 Cal.4th at p. 430, fn. 10.) Nothing in the court's language suggests that when there are license lapses by the contractor the beneficiary does deem significant he or she is not entitled to seek relief under section 7031, subdivision (b). And nothing in such language permits the unlicensed contractor to defend on the basis any payments made by a dissatisfied beneficiary were "voluntarily" made.

In discussing subdivision (a) of section 7031, our Supreme Court has stated that "the statutory disallowance of claims for payment by unlicensed subcontractors *is intended to deter such persons from offering their services, or accepting solicitations of their work.* That policy applies regardless of whether the other party's promise to pay for the work was honest or deceitful." (*Hydrotech*, *supra*, 52 Cal.3d at p. 998; see also *Construction Financial*, *supra*, 53 Cal.App.4th at p. 181.) The same policy underlying subdivision (a) of section 7031 of deterring unlicensed persons from engaging in the contracting business infuses subdivision (b). If unlicensed contractors are barred from

recovery for unlicensed services, the beneficiary of such services correspondingly must be entitled to recover any payments made to the unlicensed contractor whether the beneficiary knowingly or unknowingly paid for unlicensed work or made such payments voluntarily. And, as our Supreme Court has abundantly made clear, this is so even if such recovery results in unjust enrichment to the beneficiary. (See *MW Erectors*, *supra*, 36 Cal.4th at p. 424; *Hydrotech*, *supra*, at p. 995; *Lewis & Queen*, *supra*, 48 Cal.2d at pp. 150-152.)

Moreover, section 7031, subdivision (b) provides that the "person who utilizes the services of an unlicensed contractor may bring an action . . . to recover *all* compensation paid to the unlicensed contractor for performance of any act or contract." (Italics added.) The statute allows recovery of *all* compensation paid to the unlicensed contractor, and it contains no exception for any "voluntary" payments. The court, therefore, did not err in basing the attachment order on all payments claimed to have been made by respondents.

D. Barak Is Not Entitled to Compensation for Postlicense Work

Appellants argue that Barak should have been granted an offset for unpaid work performed after Barak became licensed. The fact that Barak became licensed sometime during performance of the contract is immaterial.

As our Supreme Court has stated, "To protect the public, the [CSLL] imposes strict and harsh penalties for a contractor's failure to maintain proper licensure. Among other things, the CSLL states a general rule that, regardless of the merits of the claim, a contractor may not maintain any action, legal or equitable, to recover compensation for 'the performance of any act or contract' unless he or she was duly licensed '*at all times* during the performance of that *act or contract.*' (§ 7031, subd. (a) . . . , italics added.)" (*MW Erectors*, *supra*, 36 Cal.4th at p. 418, fn. omitted; *Great West Contractors, Inc. v. WSS Indus. Const., Inc.* (2008) 162 Cal.App.4th 581, 587 (*Great West Contractors*).) Thus, to recover for work performed on a project, the contractor must have been licensed at all times *before* commencing *any* work on the project. The Supreme Court has clarified that "if fully licensed at all times during contractual *performance*, a contractor is

not barred from recovering compensation for the work solely because he or she was unlicensed when the contract was *executed.*" (*MW Erectors, supra,* at p. 419.)

Because appellants were not licensed at the time performance under the contract commenced, they are not entitled to any recovery for work performed even if Barak obtained its license during construction. (*MW Erectors, supra,* 36 Cal.4th at pp. 425-426 [Legislature intended to impose "stiff all-or-nothing penalty" for unlicensed work]; *Great West Contractors, supra,* at pp. 591-592 [unlicensed contractor may not segregate acts performed in furtherance of contract into discrete tasks to avoid bar of CSLL].) Any postlicense work may not be set off against respondents' potential recovery. This would be so "even when the person for whom the work was performed has taken *calculated advantage* of the contractor's lack of licensure," since "*it matters not* that the beneficiary of the contractor's labors knew the contractor was unlicensed." (*MW Erectors, supra,* 36 Cal.4th at p. 424, italics added; *Hydrotech, supra,* 52 Cal.3d at pp. 997-1002.) Indeed, the beneficiary of services by an unlicensed contractor would not be estopped by equitable concerns from invoking the CSLL against a claim for payment or offset by the contractor. (See *MW Erectors, supra,* at pp. 423-424.)

E. The Court Properly Included "Extras" in the Attachment Amount

Appellants contend that any compensation for "extras" was paid pursuant to separate *oral* agreements and, with one exception, such work was performed subsequent to Barak becoming licensed. We have disposed of the argument that work performed after Barak obtained licensing is subject to a different rule than work performed before licensing, performance having begun without a license. We further hold that "extras" undertaken in furtherance of the contract are subject to the CSLL.

The CSLL does not simply apply to work by unlicensed contractors under formal contract; it is intended to deter unlicensed contractors from offering or performing *unlicensed services* for pay. (*MW Erectors, supra,* 36 Cal.4th at pp. 427-428; *Lewis & Queen, supra,* 48 Cal.2d at p. 147; *Great West Contractors, supra,* 162 Cal.App.4th at p. 592.) The Supreme Court has recognized that "parties do sometimes operate without, or beyond the boundaries of, a formal contractual arrangement, under an implicit

understanding that the contractor is working on a quantum meruit basis." (*MW Erectors, supra*, at p. 428.) The court has held that reference to "act" or "contract" in section 7031, subdivisions (a) and (b) "ensures that one may not avoid the all-or-nothing bar against recovery for unlicensed services simply because there is no formal contract."[7] (*MW Erectors*, *supra*, at p. 428.) That appellants may have undertaken work for respondents not strictly listed within the four corners of the June 2004 written contract would not forestall application of the CSLL to such "extras."

2. Stipulated Order Against Weisz*

Weisz asserts the trial court reversibly erred by issuing a "preliminary injunction" against him without satisfying appropriate procedural requirements for granting injunctive relief. We disagree, as Weisz failed to preserve this ground for appeal.

At the hearing on the applications, appellants argued that Weisz should not be included in the attachment. The trial court inquired of appellants' counsel, "Would your client be willing to accept the restraining order they can't encumber the house --" Interrupting the court, appellants' counsel replied, "Absolutely." The court continued, "-- in the meantime?" Counsel reiterated, "Absolutely, absolutely." The court then turned to respondents' counsel and asked if respondents would consent, saying, "I think that's really the safer way to go and your client[s] will be protected." The court subsequently explained, "I don't see why he [Weisz] should lose his house now." After additional dialogue on other issues, respondents' counsel reluctantly consented, stating, "If that's the recommendation of the court that the one writ [against Barak] would issue" against the corporation and "the other writ [against Weisz] instead would be placed . . . on

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[7] Section 7031, subdivision (a) states that, except as provided in subdivision (e), which exception we have noted is not applicable to this case, "no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any *act* or *contract* where a license is required . . . ." (Italics added.)

[*] See footnote, *ante*, page 1.

defendants [*sic*] pursuant to their [*sic*] house," then "I guess we would have to accept what we can get."

The court thereupon ruled: "Mr. Weisz is restrained. I should say Mr. Weisz consents to . . . an order prohibiting him from selling, encumbering or diminishing the value of his residence until . . . this case is adjudicated" or "further order of the court." Counsel for Barak went along with this ruling, except to raise a "technical" matter that "for the record we didn't waive our rights to argue that *there shouldn't be an attachment on either [Barak or Weisz]*." (Italics added.) Counsel's objection therefore was directed to the granting of any relief to respondents whatsoever rather than the nature of the relief granted as to Weisz.

Weisz further asserts that there were no grounds for the trial court's order restraining him from selling, encumbering or diminishing the value of his home pending determination of this action.

For the same reason the right to attach order was proper as to Barak, it was proper as to Weisz based on the pleadings, declarations and admissions before the court. The court expressly or impliedly found the claim against Weisz was based on contract, the amount sought for recovery was a fixed or readily ascertainable amount not less than $500, the amount was unsecured and the claim arose from Weisz's commercial activities.

Nor do we accept appellants' claim that Weisz is not individually accountable under the CSLL. Under the CSLL, "Contractor" is defined as "any *person* who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building . . . ." (§ 7026, italics added.) Section 7026.1, subdivision (b) further broadly defines the term "contractor" to include "[a]ny *person*, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid, to construct any building or home improvement project, or part thereof." (Italics added.)

Under the evidence, Weisz was a "person" who undertook, offered to undertake or purported to have the capacity to undertake, and who submitted a bid for, the remodeling and improvement of respondents' home. The verified complaint and declaration in support of the right to attach order established that Weisz told respondent Goldstein he was personally engaged in the business of residential construction and remodeling, and that Barak was "his" company. According to the declaration, Weisz told respondents that both he and Barak were licensed California building contractors. Weisz purportedly made false or misleading statements regarding Barak or the work to be performed, and he signed the contract on behalf of Barak. Weisz allegedly took an active role in respondents' project. He also engaged in actions in derogation of the contract, such as persuading a third party contractor to modify or alter its contracts so that respondents were charged a disproportionate amount, and Barak a lesser amount, of the cost to replace flooring damaged by Barak. Weisz denied the allegations, but the court was not obliged to believe him. (*Bank of America v. Salinas Nissan, Inc.*, *supra*, 207 Cal.App.3d at p. 274.)

Appellants assert that the "entire basis" of respondents' application for right to attach order against Weisz was their cause of action for violation of the CSLL -- a claim asserted in the complaint solely against Barak. Although Weisz is not named as a defendant in the CSLL cause of action, Weisz was named a defendant to the breach of contract and all other causes of action based upon the same transaction, and the evidence on this record indicates he acted in violation of the CSLL. In *Lewis & Queen*, the Supreme Court declared that "[w]hatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the power and duty to ascertain the true facts in order that it may not unwillingly lend its assistance to the consummation or encouragement of what public policy forbids." (*Lewis & Queen*, *supra*, 48 Cal.2d at pp. 147-148.)

The court determined Weisz acted as an unlicensed contractor and found a sufficient showing of alter ego. There was sufficient basis for the court to find Weisz was a "contractor" subject to the CSLL.

DISPOSITION

The orders are affirmed. Respondents are to recover costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

FLIER, J.

We concur:

COOPER, P. J.

RUBIN, J.