

CALIFORNIA COURT OF APPEAL, SECOND DISTRICT, DIVISION 1

Phx. Mech. Pipeline, Inc. v. Space Exploration Techs. Corp.

Phx. Mech. Pipeline, Inc. v. Space Exploration Techs. Corp., 12 Cal. App. 5th 842, 219 Cal. Rptr. 3d 775 (2017)  
· No. B269186

SUMMARY

The California Court of Appeal held that Business and Professions Code § 7031(a) strictly requires a corporate plaintiff itself to hold a contractor’s license to sue for compensation for work requiring a license, and a license held by an employee or another entity is insufficient; the statute applies regardless of the defendant’s sophistication and is not limited to homeowner-contractor relationships. However, the court reversed the demurrer in part, finding that the plaintiff adequately alleged some services (e.g., car washing, hauling) did not require a license and that separate invoice-based agreements allowed those claims to proceed, while affirming denial of leave to amend to allege an employment relationship as inconsistent with prior pleadings.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                              |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | California Court of Appeal, Second District, Division 1                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | LUI, J.; ROTHSCHILD, P.J.; CHANEY, J.                                                                                                                                                                                                                                        |
| JURISDICTION          | California                                                                                                                                                                                                                                                                   |
| DOCKET                | B269186                                                                                                                                                                                                                                                                      |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Appeal from judgment entered after the trial court sustained defendant's demurrer to plaintiff's second amended complaint without leave to amend, finding plaintiff failed to allege it was a licensed contractor as required by Business and Professions Code section 7031. |
| STANDARD OF REVIEW    | De novo review of order sustaining demurrer; abuse of discretion review of denial of leave to amend.                                                                                                                                                                         |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                                                                                                                                    |
| PARTIES               | Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.                                                                                                                                                                                                    |

TOPICS

- construction law
- civil procedure
- appellate procedure
- pleadings
- contracts

## PRACTICE AREAS

Construction Law

Contract Law

Licensing Law

Civil Procedure

## QUESTIONS PRESENTED

1. Whether an unlicensed corporation can rely on the contractor's license of its responsible managing officer to satisfy Business and Professions Code section 7031.
2. Whether Business and Professions Code section 7031 is limited to contracts with unsophisticated homeowners or applies to all contracts for work requiring a contractor's license.
3. Whether Phoenix Pipeline adequately alleged that some services it provided did not require a contractor's license, and whether those claims could be severed from licensed work.
4. Whether the trial court abused its discretion in denying leave to amend to allege that Phoenix Pipeline was an employee rather than an independent contractor.

## HOLDINGS

1. Section 7031 requires the 'person' that contracted and filed suit to be licensed; a license issued to another individual or entity is insufficient to permit an unlicensed corporation to maintain an action for compensation for work requiring a contractor's license.
2. Section 7031 applies to all contracts for work requiring a contractor's license, regardless of the sophistication of the parties; there is no implied exception for commercial contracts with sophisticated corporate entities.
3. At the demurrer stage, liberally construing the complaint, Phoenix Pipeline adequately alleged that certain services (e.g., hauling, car washing) did not require a contractor's license, and because it alleged separate agreements for each task, it could pursue claims for those non-licensed services; section 7031 does not bar such claims.
4. The trial court did not abuse its discretion because the proposed amendment was inconsistent with Phoenix Pipeline's own prior allegations that it entered into individual agreements and submitted invoices as a contractor.

## KEY QUOTATIONS

*“Because Phoenix Pipeline did not allege that it was licensed, section 7031 precludes its claims for work that required a license. None of the arguments that Phoenix Pipeline makes to escape the effect of section 7031 can avoid this result, however harsh.”* (12 Cal. App. 5th at 848)

*“The 'person' that contracted with SpaceX and that has filed suit here is Phoenix Pipeline. It needed its own license to maintain this action, which it did not have.”* (12 Cal. App. 5th at 849)

*“There is no basis to read into section 7031 the limitation that Phoenix Pipeline suggests. Phoenix Pipeline's claim that SpaceX is a sophisticated corporate entity is therefore irrelevant to Phoenix Pipeline's obligation to show that it was licensed.”* (12 Cal. App. 5th at 851)

*“At this stage of the case, we hold only that Phoenix Pipeline has adequately alleged particular agreements to perform work that did not require a contractor's license. Section 7031 does not bar an action for compensation for such work.”* (12 Cal. App. 5th at 854)

*“Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state.”* (12 Cal. App. 5th at 848)

## FACTUAL BACKGROUND

In 2010, SpaceX requested that Phoenix Pipeline provide various services including plumbing, general maintenance, concrete removal, trash clean-up, demolition, car washing, electrical, excavation, and installation. Phoenix Pipeline performed these services and submitted invoices, which it alleged constituted individual agreements. SpaceX paid for services from 2010 to October 2013 but failed to pay for services performed between October 2013 and August 2014, totaling \$1,037,045.66. Phoenix Pipeline was not a licensed contractor, though its responsible manager officer, Harold Hill, held a contractor's license issued to another entity, Phoenix Mechanical Plumbing, Inc. Phoenix Pipeline filed suit to recover the unpaid amounts.

## PROCEDURAL HISTORY

Phoenix Pipeline filed its initial complaint on December 29, 2014, asserting claims for breach of contract and related causes. SpaceX demurred on the ground that Phoenix Pipeline was not licensed. Phoenix Pipeline filed a first amended complaint (FAC) adding allegations about its responsible managing officer's license. SpaceX again demurred, and the trial court sustained the demurrer with leave to amend. Phoenix Pipeline filed a second amended complaint (SAC) distinguishing between services requiring a license and those that did not. The trial court sustained the demurrer without leave to amend and entered judgment. Phoenix Pipeline appealed.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remanded to permit further pleading consistent with this opinion, specifically to allow Phoenix Pipeline to amend its complaint to allege claims for noncontractor services only.

## CASES CITED

- Lazar v. Hertz Corp., 69 Cal. App. 4th 1494, 82 Cal. Rptr. 2d 368 (1999)
- Blank v. Kirwan, 39 Cal. 3d 311, 216 Cal. Rptr. 718, 703 P.2d 58 (1985)
- Owens v. Kings Supermarket, 198 Cal. App. 3d 379, 243 Cal. Rptr. 627 (1988)
- Ellenberger v. Espinosa, 30 Cal. App. 4th 943, 36 Cal. Rptr. 2d 360 (1994)
- Hydrotech Systems, Ltd. v. Oasis Waterpark, 52 Cal. 3d 988, 277 Cal. Rptr. 517, 803 P.2d 370 (1991)
- Lewis & Queen v. N. M. Ball Sons, 48 Cal. 2d 141, 308 P.2d 713 (1957)

- MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 36 Cal. 4th 412, 30 Cal. Rptr. 3d 755, 115 P.3d 41 (2005)
- WSS Industrial Construction, Inc. v. Great West Contractors, Inc., 162 Cal. App. 4th 581, 76 Cal. Rptr. 3d 8 (2008)
- Opp v. St. Paul Fire & Marine Ins. Co., 154 Cal. App. 4th 71, 64 Cal. Rptr. 3d 260 (2007)
- Banis Restaurant Design, Inc. v. Serrano, 134 Cal. App. 4th 1035, 36 Cal. Rptr. 3d 532 (2005)
- Vallejo Development Co. v. Beck Development Co., 24 Cal. App. 4th 929, 29 Cal. Rptr. 2d 669 (1994)
- Matchett v. Gould, 131 Cal. App. 2d 821, 281 P.2d 524 (1955)
- Norwood v. Judd, 93 Cal. App. 2d 276, 209 P.2d 24 (1949)
- Galich v. Brkich, 103 Cal. App. 2d 187, 229 P.2d 89 (1951)
- Wold v. Luigi Consentino & Sons, 109 Cal. App. 2d 854 (1952)
- Gatti v. Highland Park Builders, Inc., 27 Cal. 2d 687, 166 P.2d 265 (1946)
- Citizens State Bank v. Gentry, 20 Cal. App. 2d 415, 67 P.2d 364 (1937)
- Scientific Cages, Inc. v. Banks, 81 Cal. App. 3d 885, 146 Cal. Rptr. 780 (1978)
- Executive Landscape Corp. v. San Vicente Country Villas IV Assn., 145 Cal. App. 3d 496, 193 Cal. Rptr. 377 (1983)
- Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 164 Cal. Rptr. 839, 610 P.2d 1330 (1980)
- Johnson v. Mattox, 257 Cal. App. 2d 714, 65 Cal. Rptr. 185 (1968)
- The Fifth Day, LLC v. Bolotin, 172 Cal. App. 4th 939, 91 Cal. Rptr. 3d 633 (2009) (Mosk, J., dissenting)