

Dammit, Your Mother and I Told You . . .

July 2018

Again this is the summer silly season. Which means during the summer months news is slow and we in the press try to do as little as possible.

So as we typically say at this time of the year. . . In previous months we have seen some of the same old problems. (Which is true.) As we continue to ride the greatest economic boom in the history of the United States (ten years and counting) and dread the inevitable downturn, we again address a number of problematic things we have seen - and continue to see - since time began.

Perhaps the new Supreme Court Justice Brett Kavanaugh will save us, but the New York Times and Las Vegas think that won't happen.

Change Orders. We continue to receive calls/emails from concerned general contractor clients. They state that at the end of a job their clients are refusing to pay the final bill because some of the change orders were not signed. Indeed, some of these clients and even their counsel claim that this lack of signed change orders voids the contract.

Appearing for perhaps the fifth time in this column, the statute on point states:

California Business and Professions Code Section 7159.6.

(a) An extra work or change order is not enforceable against a buyer unless the change order sets forth all of the following:

- (1) The scope of work encompassed by the order.
- (2) The amount to be added or subtracted from the contract.
- (3) The effect the order will make in the progress payments or the completion date.
providing written authorization.

(c) Failure to comply with the requirements of this section does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

Please note the mushy statutory language; it is common with California Business and Professions Code contractor sections. Translated, to the extent that it can be translated, the section states that change orders are supposed to not only be prepared before the work but also signed before doing the work.

We gently draw the reader's attention to the last section (c). It states if the contractor performs a work of improvement that benefits the client with or without a signed change order it may still be entitled to some compensation. This is an equitable claim, meaning that if the work

performed under the unsigned change order provided value to the homeowner, the contractor should still be compensated in line with the value provided.

The Take-Away. The main contract is certainly not voided by unsigned change orders. And while the contractor may not get as much it would with a signed change order and its markup, it is certainly entitled to the market value of the improvements conferred.

California Business and Professions Code, the CSLB, and Statutorily Compliant Home Improvement Contracts. There are a ton of mandated statutory notice and disclosure requirements, most found in California Business and Professions Code Section 7159. Fifty notices? A thousand? No one really knows. The vast majority of home improvement contracts do not contain all of them. As time has gone on, these statutory notice and disclosure requirements have made home improvement contracts look like the 500 pages of documents one gets when signing off on the purchase or sale of a home.

Does the failure to comply with including all notices void the home improvement contract? The short answer is no. If you do the work, you can and should get paid. However, the failure to provide the three day right to cancel, when required, could allow the homeowner to cancel the contract at any time. So please do not forget to include the three day right to cancel notice.

There is a downside to not being in compliance. If a homeowner makes a complaint to the CSLB and the CSLB accepts it, non-compliance can be grounds for an investigation and possibly fines. It can also impact a contractors ability to settle a civil dispute, whether in court or arbitration.

How To Become in Compliance. We are sorry to say in this case you really need to consult with a construction attorney; it is that complicated.

Next Month. We will discuss the fact that permits cannot be waived – by the contractor, by the client, by any party to a construction project.

Bryant H. Byrnes, Esq. practices construction law in the San Francisco Bay Area and is counsel to the San Francisco NARI Board of Directors.

Brian J. Trowbridge, Esq. of Trowbridge Law Office practices construction law, business law, succession and estate planning, and employment law in the San Francisco Bay Area.

For Bryant and Brian's previous articles, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade." They are also available on his website under "Articles," and on Brian's website under "[Publications](#)."

As always, these articles are summary discussions only - to simply give you a heads up on various construction topics. The information contained herein is not legal advice.