Michigan Supreme Court Addresses Claims Involving Unlicensed Residential Builders

By Nicole S. Tersigni, Stuart M. Schwartz / Oct 15, 2015

On September 28, 2015, the Michigan Supreme Court issued a decision in the case of Epps v 4 Quarters Restoration LLC, that finally resolved a number of issues common to residential construction disputes involving work by an unlicensed builder. In summary, the Court determined that:

- the Michigan statute (MCL 339.2412), preventing an unlicensed builder from bringing or maintaining a collection action, did not prevent an unlicensed builder from defending against claims asserted against him by a homeowner;
- the statute did not provide a homeowner with an independent cause of action for damages arising from a violation of the statute; and
- a contract for services of an unlicensed builder is not void from the point of its execution but, rather, "voidable," leaving the power to enforce it in the hands of the homeowner.

The case involved homeowners who engaged the services of an unlicensed builder and his restoration companies to perform restoration work necessitated by flood damage. Although the builder displayed a copy of his residential builder's license, he neglected to inform the homeowners that the license was revoked earlier that year. By the end of 2006, the builder apparently discontinued work, and the parties disputed whether work was performed in a satisfactory manner.

The homeowners brought suit against the unlicensed builder and his companies claiming: (1) the builder was not entitled to compensation because he failed to hold the requisite residential builder's license; (2) the parties' contract was therefore "illegal, void and unenforceable;" and (3) the builder defrauded them, by performing his work in a deficient manner and converting their insurance proceeds.[1] The trial court found in favor of the homeowners, relying on MCL 339.2412(1) - which prohibits an unlicensed builder from maintaining an action for collection of compensation. On appeal, the Court of Appeals carefully noted that MCL 339.2412 did not prohibit the builder from "defending" against the homeowners' claims; that it did not give the homeowners a private cause of action; and that the contract was "void" at its execution. Additionally, the Court of Appeals reasoned that "a homeowner aggrieved by a builder's unlicensed work was obligated to seek damages under traditional contract and tort theories." Believing that the builder had in fact converted the homeowners' funds, however, the Court of Appeals nonetheless affirmed the judgment for the homeowners.

The builder appealed to the Michigan Supreme Court. The Michigan Supreme Court affirmed in part, and reversed in part. First, the Court carefully noted the distinction between "bring an action" and asserting a "defense," and agreed with the Court of Appeals that MCL 339.2412 did not prohibit the builder from defending against the homeowners' suit. Second, the Court agreed with the Court of Appeals that MCL 339.2412 did not give rise to a private cause of action that a homeowner may bring against an unlicensed builder, and declined to infer any private cause of action to enforce this statute, because the statute expressly provided a mechanism for its enforcement - through the prosecuting attorney or attorney general. Finally, the Court reversed the Court of Appeals on the issue of whether the contract was void at its execution. The Court first noted that there has been uncertainty and inconsistency under Michigan law regarding the legal status of contracts between a homeowner and an unlicensed builder. Then, after much discussion, the Court concluded that because MCL 339.2412 does not restrict actions taken by the homeowner, the intent of MCL 339.2412 is to treat any contract with an unlicensed builder as "voidable," not void at its execution. The Court recognized that "the statute leaves any power of enforceability there may be over the contract exclusively within the hands of the homeowner" - whereas a void contract, on the other hand, would deny both parties the authority to enforce it. Additionally, among these and other reasons for deeming these contracts "voidable" instead of void, the Michigan Supreme Court noted that if these contracts were treated as void, third parties - such as the insurance company and banking institutions in this case - could be potentially harmed and unable to exercise their rights as intended beneficiaries.

If faced with any of the issues involved in this case or a residential construction project, generally, be sure to consult an attorney. For more information, contact Nicole Simone Tersigni, Stuart Schwartz, or another member of our Construction Practice Group.

[1] The homeowners also brought claims against their insurer regarding certain checks written by their insurance company and made payable to either the homeowners and builder together, or just to the builder; a check-casher who deposited checks which carried a forged endorsement; and the check-casher's banking institution - however, these claims are outside the scope of this update.