SHEEHAN PHINNEY BASS + GREEN PA
Attorneys at Law

Client Advisory

Courts Reluctant to Impose Sanctions for Technical Violations of the Home Improvement Contractor Law

John H. Perten
Sheehan Phinney Bass + Green PA

6/9/2010

Contracts for renovations to owner-occupied, pre-existing, one to four-family homes, where the contract amount is greater than $1,000, require strict compliance with the Massachusetts Home Improvement Contractor law, Massachusetts General Laws c. 142A ("c. 142A"). Included in the requirements of c. 142A is a laundry list of mandatory clauses which must appear in a written contract. The failure to comply with c. 142A not only violates the Consumer Protection Act (M.G.L. c. 93A), which exposes contractors to the specter of treble damages plus attorneys' fees, but also may result in personal liability to the principal of a home improvement contractor. Notwithstanding the liability shield normally enjoyed by one operating as a corporation or an LLC, c. 142A allows for the imposition of personal liability on the home improvement contractor's principal.

Two recent superior court decisions demonstrate that courts may be reticent to find a violation of c. 93A and attach personal liability to a home improvement contractor principal, notwithstanding the clear language of the statute which seems to dictate otherwise. To the extent that these decisions may reflect a judicial trend, homeowners should no longer assume that they will, without fail, recover multiple damages in the event of a technical violation of c. 142A. This is not to suggest, however, that home improvement contractors should feel free to ignore c. 142A. The potential for real damages is significant and the two decisions reported here are not appellate decisions. Therefore, they are not binding in other cases. However, they may suggest a trend and certainly provide an argument if you are a home improvement contractor faced with a technical c. 142A violation.

In both cases, the evidence was incontrovertible that the contractor did not have a written contract, a clear violation of c. 142A and, by extension, a violation of c. 93A. In both, the homeowners brought a claim against the principal of the contractor seeking to have him held personally liable for violating c. 142A. In both instances, however, the Court denied the homeowners' motion for summary judgment. Although c. 142A specifically states that the failure to comply with that law is a *per se* violation of c. 93A,

SHEEHAN PHINNEY BASS + GREEN PA
Attorneys at Law

the Court ruled that despite the statutory language, not all violations of c. 142A necessarily rise to the level of a c. 93A violation. Moreover, even if there had been a technical violation of c. 142A or c. 93A, the Court observed that this does not necessarily mean that any damages resulted from that violation. Therefore, unless and until damages were proven, the Court would not enter judgment.

As noted above, these are not appellate decisions. Notwithstanding, it does demonstrate that trial judges may be willing to ignore the plain verbiage of c. 142A so as to avoid imposing personal liability on the home improvement contractor principal. This is especially so where the violation is technical in nature and the record includes no evidence that the failure to comply with the statute actually harmed the homeowner – in other words, “no harm, no foul.” While this should provide some peace of the mind, the best protection for a home improvement contractor is to ensure that it fully complies with c. 142A. It is not hard to do, and well worth the effort so that you do not have to rely on the hope that you get a sympathetic judge who is willing to give a generous read to the statute.

* * *

John H. Perten is a shareholder at Sheehan Phinney Bass + Green PA. He is a member of the Construction, Litigation and Business Groups. He may be reached at jperten@sheehan.com or 617.897.5641.

This article is intended to serve as a summary of the issues outlined herein. While it may include some general guidance, it is not intended as, nor is it a substitute for, legal advice.