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## Tom v. Innovative Home Systems, LLC, 132 Nev. Adv. Op. 15 (Mar. 10, 2016)

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LICENSES: CONTRACTORS  
ADMINISTRATIVE LAW AND PROCEDURE

**Summary:**

The Court determine that the decision of the State Contractors' Board closing homeowners' complaint and directing contractor to make repairs to residence was not a final decision resolving a contested case, as required to preclude a homeowner from relitigating whether contractor was required to have an electrical license. The Court also determine that genuine issues of material fact existed as to whether the contractor needed an electrical license and genuine issues of material fact existed as to whether the contractor completed its contractual obligations to homeowner.

**Background**

Tom and Innovative Home Systems ("IHS") entered into a contract in April 2012, in which IHS agreed to install automation, sound, surveillance, and landscaping systems in Tom's residence. IHS then began work on the residence. IHS did not have an electrical contractor's license when it bid the contract and began the work. In September 2012, IHS applied for and received, an electrical contractor's license. IHS contends this license was needed for other projects it would be working on, but not for the work on Tom's residence. IHS continued working on the Tom residence until December 2012. At that time, the parties disagreed on the performance of the contract, Tom refused to tender further payment to IHS, and IHS consequently filed a notice of lien against Tom's residence. In response, Tom filed a consumer complaint with the Nevada State Contractors' Board (the Board), a state administrative agency, alleging that (1) IHS did not complete certain parts of the contract in a workmanlike manner and (2) IHS bid the job and performed the work without first obtaining the required electrical license.

An investigator for the Board investigated the matter and sent IHS a notice to correct, which required IHS to correct nine of the items listed in the complaint. HS purportedly remedied the work items identified by the investigator and responded with a letter that it did not need a license to complete the work on Tom's residence. The Board closed the case as resolved through a letter signed by a compliance supervisor. The Board neither conducted an adversary proceeding to determine the legal rights of the parties, nor issued a written decision specifically ruling on the license issue.

IHS filed a complaint in district court against Tom alleging breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, foreclosure of notice of lien, and declaratory relief. IHS also requested attorney fees. IHS then filed a motion for summary judgment on its claims, arguing that an electrical license was not required for the work performed on Tom's residence and that its lien was proper and perfected. The District Court awarded summary

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<sup>1</sup> By Adrienne Brantley

judgement in favor of the contractor, determining that HIS did not need a license, awarded IHS \$1,144.37 in costs and \$35,350.00 in attorney fees, and denied IHS's unjust enrichment claim.

## **Discussion**

### *Nevada's licensing laws*

The Court noted that the primary purpose of Nevada's licensing statutes is to protect the public against both faulty construction and financial irresponsibility. Anyone engaging in the business or acting in the capacity of a contractor, or submitting a bid on a project, must be licensed unless they are exempt from licensure.<sup>2</sup> Under NAC 624.200(2)(d) an electrical license is required for the installation, alteration and repair of systems that use fiber optics or do not exceed 91 volts, including telephone systems, sound systems, cable television systems, closed circuit video systems, satellite dish antennas, instrumentation and temperature controls, computer networking systems and landscape lighting.<sup>3</sup> Thus, if IHS performed any of the work described in NAC 624.200(2)(d) on Tom's residence, it needed an electrical license in order to bid on and perform the work.<sup>4</sup>

### *Licensure*

The Court stated that, in resolving the licensing issue, the district court relied on the Board's resolution of Tom's complaint, which the court found determinative of whether IHS needed a license for the work it performed on Tom's residence, thus giving that resolution preclusive effect. The district court further concluded that the advisory opinions provided by IHS also demonstrated that IHS did not need a license for the work it performed. The Court thus began its examination of these issues by first considering whether the district court properly concluded that the Board's resolution of Tom's administrative complaint was dispositive evidence that IHS did not need a license for the work performed on Tom's residence. Thereafter, the Court considered whether the district court's reliance on the advisory opinions issued by the Board further demonstrated that IHS did not need a license.

### *The District Court's Reliance on the Board's Decision*

The Court emphasized that the district court essentially held that the Board's decision was entitled to preclusive effect on the question of whether a license was required so as to bar Tom from relitigating that issue. Therefore, the Court analyzed claim preclusion and how those legal principles apply in the administrative context. Claim and issue preclusion can apply in the administrative context when an administrative agency is acting in a judicial capacity and

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<sup>2</sup> NEV. REV. STAT. §624.700(1)

<sup>3</sup> NAC 624.200(2)(d)

<sup>4</sup> The Court noted an exception to the licensure requirement exists when the project is limited to the "sale or installation of any finished product ... which is not fabricated into and does not become a permanent fixed part of the structure." NEV. REV. STAT. §624.031(6)

resolves disputed issues of fact properly before it which the parties have had an opportunity to litigate.<sup>5</sup> An agency decision can result in issue or claim preclusion as to a subsequent decision made by another court or a different agency.<sup>6</sup> In order for either doctrine to apply to bar the relitigation of a claim or issue, all the elements of the particular doctrine must be met. For claim preclusion to apply, (1) the same parties or their privies must be involved in both cases, (2) a valid final judgment must be entered in the first case, and (3) the subsequent action must be “based on the same claims or any part of them that were or could have been brought in the first case.”<sup>7</sup> After laying out the elements for claim and issue preclusion the Court then turned to the issue of whether the Board’s resolution of Tom’s administrative complaint met these elements such that it barred Tom from relitigating the licensing issue in the district court.

### *The Board*

To determine if the Board’s resolution of Tom’s administrative complaint met the elements of claim and issue preclusion, the Court examined the statutory powers of the Board and its role in resolving complaints. The Board is vested with all of the functions and duties relating to the administration of [NRS Chapter 624].<sup>8</sup> This includes adjudicating contested cases.<sup>9</sup> Related to its investigative duties and ability to resolve contested cases, the Board can also make findings of fact regarding the issues presented to it.<sup>10</sup>

### *The Board’s Decision on Tom’s Administrative Complaint*

The Court next analyzed the Board’s decision on Tom’s complaint. The Board conducted an investigation on Tom’s complaint and issued a notice to correct to IHS. The notice from the investigator in this case directing IHS to make certain repairs did not determine the legal rights, duties, or privileges of either party. The Board did not issue findings of fact and conclusions of law. Therefore, the Court concluded that the Board’s decision cannot be characterized as a final decision resolving a contested case and that no preclusive effect could be given to the Board’s decision on Tom’s complaint.

### *The District Court’s Reliance on Advisory Opinions Addressing Other Matters*

The Court noted that the district court also explicitly relied on three advisory opinions. The Court concluded that in reviewing the questions addressed in the advisory opinions, all three were factually dissimilar to the case at bar and the opinions were very brief, each consisting only of a one-sentence statement of the issue and one or two sentences for the opinion. The Court held that the district court erred in treating the Board’s letter closing Tom’s complaint

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<sup>5</sup> Holt v. Reg'l Tr. Servs. Corp., 127 Nev. 886, 891 (2011)

<sup>6</sup> Redrock Valley Ranch, LLC v. Washoe Cty., 127 Nev. 451, 459 (2011).

<sup>7</sup> Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc., 321 P.3d 912, 915 (2014).

<sup>8</sup> NEV. REV. STAT. §624.160(1)

<sup>9</sup> *Id.*

<sup>10</sup> NEV. REV. STAT. §233b.125

as dispositive of the license issue. The Court further concluded that the advisory opinions did not support granting IHS summary judgment on that issue. Thus, the Court concluded that IHS failed to meet its initial burden of production to show the absence of a genuine issue of material fact regarding whether it needed a license.

#### *Breach of Contract*

The Court next concluded that IHS had not met its burden of proving that no genuine issue of material fact existed regarding whether the contract was completed. The closing of Tom's Board complaint was not dispositive evidence that IHS completed the contract. Thus, the Court held that summary judgment on this issue was improper as well.

#### *Attorney's Fees*

Lastly, the Court noted that because of its conclusion that summary judgment was inappropriate in this case, the award of attorney fees is necessarily vacated; thus, the Court did not address this issue.

#### **Conclusion**

Because genuine issues of material fact remain as to whether IHS needed a license to perform certain work under the contract and whether IHS completed the contract, the Court reversed the district court's order granting summary judgment in IH's favor. Accordingly, the Court also vacated the award of attorney fees and remand this case to the district court for further proceedings consistent with this opinion.