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### Summary of Kourafas v. Basic Food Flavors, Inc., 120 Nev. Adv. Op. 22

Hilary Barrett Muckleroy  
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***Kourafas v. Basic Food Flavors, Inc.*, 120 Nev. Adv. Op. 22, 88 P.3d 822  
(2004)<sup>1</sup>**

**BREACH OF CONTRACT – CONTRACTOR’S LICENSE –  
CONSTRUCTION MANAGEMENT**

**Summary**

Appeal from a district court order dismissing appellant’s breach of contract claim and awarding attorney’s fees and costs to respondent.

**Disposition/Outcome**

Reversed and remanded. A contractor’s license is not required to recover for construction management services. Whether an architect provides construction management services is a question of fact.

**Factual and Procedural History**

Christopher T. Kourafas, a licensed architect, entered into an agreement with Basic Food wherein he would design a North Las Vegas facility. Kourafas and Basic Food entered into a second agreement in which Kourafas would provide construction management services in exchange for a fee of ten percent of the project’s construction costs.

After Basic Food failed to pay Kourafas for his services under the second agreement, Kourafas filed a breach of contract action. Basic Food then filed a motion to dismiss on the grounds that because Kourafas was not a licensed contractor, he had no right to bring an action for construction management costs. The district court granted Basic Food’s motion to dismiss, and awarded Basic Foods attorney’s costs and fees.

Kourafas argued two points on appeal. First, that his lack of a contractor’s license was not fatal because his construction management services fell within the scope of his architect’s license. Second, even if he must have a contractor’s license, he should still be able to recover under the doctrine of unjust enrichment.

**Discussion**

A review of a dismissal of an action for failure to state a claim is strictly reviewed.<sup>2</sup> All factual allegations in the complaint are regarded as true, and all inferences are drawn in favor of the non-moving party.<sup>3</sup> A complaint is to be dismissed only when it appears beyond a reasonable doubt that the plaintiff could prove no facts that would entitle him to relief.<sup>4</sup>

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<sup>1</sup> By Hilary Barrett Muckleroy

<sup>2</sup> Hampe v. Foote, 118 Nev. 405, 408 (2002).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

An architect's practice encompasses construction management. An architect is any person engaged in the practice of architecture.<sup>5</sup> The practice of architecture includes rendering services "embracing the scientific, esthetic, and orderly coordination of processes which enter into the production of a completed structure . . . ."<sup>6</sup>

A contractor is defined as "any person, except a registered architect . . . who, by himself or through another, performs any of a wide-ranging number of tasks on a construction project."<sup>7</sup> A contractor includes a construction manager.<sup>8</sup>

While the definition of a contractor includes a construction manager and excludes an architect, it does not mean that an architect cannot perform construction management services. The definition of an architect does not limit the job to preparation of plans and specifications. If the contract provides, an architect is allowed involvement in the construction project through completion.

Additionally, lack of a license does not necessarily preclude recovery when the strict application of a statute results in unjust enrichment.<sup>9</sup> A defendant cannot "claim the benefit of the contract and then seek to avoid its liability."<sup>10</sup>

## **Conclusion**

Whether Kourafas performed construction management services is a question of fact and cannot be determined from the face of the complaint. Additionally, it is unknown whether Basic Foods was aware of Kourafas' lack of a contractor's license. Because factual issues remained, the case was remanded.

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<sup>5</sup> NEV. REV. STAT. 623.017 (2004).

<sup>6</sup> NEV. REV. STAT. 623.023 (2004).

<sup>7</sup> NEV. REV. STAT. 624.020(2) (2004).

<sup>8</sup> NEV. REV. STAT. 624.020(4).

<sup>9</sup> Day v. West Coast Holdings, 101 Nev. 260, 265 (1985).

<sup>10</sup> *Id.*