

# ***CONTRACTOR ALERT***

Contractor Alert is a joint publication by this Contractor and the Law Offices of Richard M. Sissman, Esquire, located at 1485 Chain Bridge Road, Suite 105, McLean, VA 22101. This newsletter is designed to give general information on the matters covered. Space limitation prevents exhaustive treatment or analysis of this topic. This newsletter is not intended to substitute for advice on specific legal problems. If you are interested in receiving a complimentary issue or to be placed on our mailing list, contact Richard M. Sissman, Esquire. We welcome and appreciate your suggestions for future article topics.

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## ***DISTRICT OF COLUMBIA HOME IMPROVEMENT STATUTE AND ITS PENALTIES***

The facts to this case are interesting. A contractor and its subcontractor entered into contracts for the remodeling of two (2) homes located in the District of Columbia. At the time of entry into the contract, the prime contractor knew or should have known that its subcontractor did not hold a D.C. home improvement license. The prime contractor is paid in full; however, the subcontractor is not paid in full and ends up suing the prime contractor in Maryland where both parties have their principal offices.

The subcontractor sues on a theory of breach of contract. The Prime Contractor files a counter claim alleging that since the sub contractor was not licensed at the time of the remodeling work, that not only is the subcontractor not entitled to any further payments, he must return all the funds received from the Prime Contractor for work upon the D.C. home projects.

It is undisputed that the Prime Contractor contracted with the homeowners and the subcontractor did not have any contract with the home-owners. The Prime is attempting to invoke the provisions of the D.C. Home Improvement Act codified by the District of Columbia Municipal Regulations ("DCMR"). 16 DCMR \* 800.1 in part provides:

No person shall require, except any payment for a home improvement contractor in advance of the full completion of all work required to be performed under the contract unless the person is licensed as home improvement contractor or as a licensed sales person employed by a licensed contractor in the accordance of the provisions of this Chapter.

### **The first question is whether Maryland contract law applies.**

Contracts are subject to the laws of the jurisdiction where the contract was entered not where the work covered in the contract is to be performed. In the instant matter as a choice of law question, the Maryland courts will follow the rule of lex loci contractus which requires that the construction of the validity of a contract will be determined by the law and state where the contract was made. In the instant matter, the contract was entered in the State of Maryland. Lex loci contractus requires that the construction validity be determined by the law where the contract was made, Commercial Union Insurance Co. v. Porter Hayden Co., 698 A.2d 1167, (1200 Md., App. 1997). Clearly, Maryland Courts will apply Maryland contract law and not District of Columbia municipal regulations.

### **DCMR'S ARE INAPPOSITE IN THE INSTANT MATTER**

Even if the court were to apply the District's DCMRs, the home improvement Regulations are not apposite. The Prime Contractor, is attempting to step into the proverbial " shoes of the homeowners" in order to request that all funds received by the subcontractor. The Regulations are quite concise that the homeowner is the party with standing to assert such a claim and it would not be a prime contractor.<sup>1</sup> In the matter of Marzullo v. Molineaux, the District of Columbia Court of Appeals held that "...[DCMR] regulations should [not] be expanded beyond reasonable limits...[and] does not grant this Court license to endow these Regulations with a meaning which their drafters never anticipated." Marzullo, 651 A.2d 808 ( D.C. 1994). The D.C. Court of Appeals has determined that statutory purpose is to ". . . protect[ ] homeowners from fraudulent and unscrupulous practices in the home improvement industry." Capital Construction, Inc. v. Plaza West Coop., 604 A.2d 428, 430 (D.C. 1992). Pursuant to 16 DCMR \* 899, "a home improvement contractor" is defined "as any person who enters or offers to enter into a home improvement contract with a home owner." ] As defined by statute, there has been no home improvement contract between a prime contractor and its

sub. 16 DCMR \* 899, further defines that a homeowner as "any person or person\*s authorized agent who enters into a contract for the performance of home improvement work on residential property owned or occupied by that person."

In conclusion the Courts will probably not allow a prime contractor to assert the claim that it is entitled to the protections provided to a homeowner when dealing with an unlicensed contractor. It is wise to make sure that the prime contractor and his subs all have D.C.

*If you should have any questions on this topic or any other related topic, please contact Mr. Sissman at his website at [www.contractoralert.com](http://www.contractoralert.com); by phone at (703) 903-9646 or (301) 762-0402.*