



## *Ground Control, LLC v. Capsco Industries, Inc., et. al.*: Opening the Door to Claims by Unlicensed Contractors in Mississippi

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The Mississippi Supreme Court, in a case of first impression, recently addressed claims for non-payment by contractors performing work in the state in violation of Miss. Code Ann. Section 31-3-15, which requires contractors performing work to be licensed with the Mississippi State Board of Contractors. Specifically, in *Ground Control, LLC v. Capsco Industries, Inc., et. al.*, No. 2011-IA-00928-SCT, --- So.3d ---, 2013 WL 2436665 (Miss. June 6, 2013), the Supreme Court held that an unlicensed 2<sup>nd</sup> tier subcontractor may bring claims against a 1<sup>st</sup> tier subcontractor with which it contracted for unjust enrichment and *quantum meruit*, for its actual costs, at least where both parties to the contract were unlicensed, and both were aware of the sub-subcontractor's failure to comply with licensing under Section 31-3-15.

In *Ground Control*, a plaintiff sub-subcontractor, Ground Control, LLC ("Ground Control"), an unlicensed, out-of-state construction firm, was hired by subcontractor Capsco Industries ("Capsco"), another unlicensed, out-of-state contractor, to perform work on a project located in Biloxi, Mississippi, owned by Harrah's Casino. Neither Harrah's nor the general contractor, W.G. Yates and Sons ("Yates"), were parties to the Ground Control-Capsco contract. Both Ground Control and Capsco were aware, when signing the contract in December 2007, that Ground Control was not licensed to do construction contracting in Mississippi, in violation of Section 31-3-15. Ground Control performed work on the project for almost a year, installing water, sewage, and storm-drain lines, until it was terminated by Yates in October.

In August 2009, Ground Control filed suit against Capsco, Harrah's, and Yates, alleging contractual and extra-contractual remedies. In response, Capsco moved for summary judgment on the grounds that, *inter alia*, the contract was illegal, and Ground Control could not recover in equity or contract. Harrah's and Yates filed a motion to dismiss, which was converted by the trial court into a motion for summary judgment *sua sponte*. The trial court granted summary judgment to all three defendants. Ground Control appealed, asserting as error, *inter alia*, the trial court's denial of equitable remedies in lieu of the admittedly-illegal contract.

In considering Ground Control's argument that, even absent a license, it should be able to pursue unjust enrichment and *quantum meruit* claims against Capsco, the Court looked to the intent of

Mississippi Code Section 31-3-15, which requires contractors operating in Mississippi to have certificates of responsibility. That statute states that any contract with a non-licensed contractor is “null and void.” The purpose of Section 31-3-15, as stated in Section 31-3-2, is “to protect the health, safety and general welfare of all persons dealing with [contractors].” The Court held that Section 31-3-15 protected and created a duty in both parties to the contract, a duty which both Ground Control and Capsco violated by signing the contract knowing that Ground Control did not possess a proper certificate of responsibility. However, the Court noted that the activity governed—contracting—was not illegal *per se*, and could thus be contemplated by equity.

Additionally, although Ground Control did not possess the “clean hands” required to invoke equity, the Court considered Capsco’s conduct more egregious. Reviewing the law of other states, the Court noted that a majority allow equitable remedies even if a contract is void, especially when the voiding statute was designed to protect that party or that party was the less culpable. Since Capsco knowingly solicited Ground Control to enter into the illegal contract, allowed it to perform work, and obtained payment for that work from Yates, the Court held that Capsco could not hide behind the contract’s illegality to avoid equitable remedies.

The Court’s ruling in *Ground Control* is arguably a narrow one, only to be applied to those instances where an upstream contractor knowingly contracts with an unlicensed party, receives the benefit of the unlicensed contractor’s work, and then seeks to use Section 31-3-15 as shield against payment to the unlicensed party. However, the majority opinion does not explicitly make the Court’s ruling that narrow. Arguably, the case could go so far as to allow a *quantum meruit* claim to proceed in any case where one party is an unlicensed contractor. Taken to the extreme, it could mean that, if one party to a contract is unlicensed, the subcontractor who is owed monies can claim amounts in equity that exceed any agreed-upon set price in a contract. Accordingly, it is imperative that parties contracting to perform Mississippi work take great care to not only comply with the licensing requirements, but to also ensure that the parties it does business with companies that are properly licensed at the time of contracting.

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