

CONTRACTOR FRAUD

Don't Become a Victim

Home Renovation Projects

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As a Construction Expert Witness, I have been involved in numerous homeowner vs. contractor lawsuits that turned out to be directly created by contractor fraud. In this article, I have combined a few different actual cases, highlighting the various tactics used by dishonest contractors to bait and then hook the homeowner. In all of these cases, the homeowner prevailed.

Definition of FRAUD

A wrongful or criminal deception deliberately practiced in order to secure unfair or unlawful gain. Trickery or a swindle.

My Initial Contact with the Disgruntled Homeowner

It was late in the afternoon, and a call came into my office. It was from a gentleman that was in great distress regarding a renovation that was taking place at his home. It seemed that every time an alleged problem arose during the renovation of his home, the contractor had been issuing change orders. The biggest problem was that until this point in time, the homeowner (trusting that the contractor was honest) had been paying for all of the alleged changes. He had a total contract to renovate his home of approximately \$500,000.00. The project had started about three weeks before, and he had already paid the contractor over \$270,000.00. Very little work had been done other than partial demolition of the old structure. Up until this point, the homeowner had gone along with all of the requests of the contractor for the additional charges. The homeowner did not want to create any problems with the contractor, and felt that by making the requested payments he would maintain a peaceful and happy project. The homeowner did not want to "rock the boat", or create any unnecessary tension with the contractor. This day was the breaking point for the homeowner. He believed that he was being taken advantage of, and he was not going to pay for any more change orders, so he wanted my opinion as to whether he was right or wrong.

My First Impressions

I offered to pay a visit to the work site, and the property owner agreed to meet me there. Upon my arrival, the homeowner gave me a quick tour of the jobsite. Debris, building materials, and tools were strewn all around the property. No workmen were present, and there was not a construction fence in place. There was an in ground pool in the back yard. There was no fence or gate surrounding the pool, and the original home had been almost totally demolished. There was easy access to the back yard through the demolished home, the exposed pool was potentially dangerous, and it was obvious that there were many children in the neighborhood.

I immediately advised the homeowner that it was imperative that he get a construction fence around this project to protect the people in the area, as well as his property. I asked the homeowner to describe the renovation plans, and he showed me the blueprints that had been given to him by the construction company. It

was apparent that the contractor was indeed taking advantage of this owner, and I spoke with the homeowner regarding his options for getting this project under control.

Why the homeowner was worried

His contractor was already threatening that all further work would stop and that he would place a mechanics lien on the property for non- payment of the most current change order that the homeowner was refusing to pay. I informed the homeowner that a change order was only valid if at least three conditions were met: 1. Change order must be signed by both parties prior to commencement of additional work (must be in writing, a verbal agreement is not normally enforceable). 2. The work has been completed satisfactorily 3. It is proven that the substance of the change order added to or changed the original terms and conditions of the prior contractual agreement.

He asked me if I knew an attorney, as he was concerned that he would be sued by the contractor if he terminated the project contract. He was also very worried about the existing condition of his home, and the possibility that his lender would call the note due because the house was basically no longer there.

The Homeowner Begins to Fight Back

I was certain that the homeowner needed to retain the services of a competent attorney, and offered several referrals that would be effective in enabling the homeowner to get control of this serious situation.

A week later, the homeowner retained me as his consultant on this project, and asked me to inform his attorney of choice about the problems with this contract and contractor. The attorney went into action against the contractor, issuing a stop notice, and filed a lawsuit regarding the abusive actions by the contractor.

Discovery Began – That's When Things Got Interesting

It seemed that the contractor primarily advertised through mailed coupons, local newspapers, and flyers. In the contractor's ads, they provided photographs of projects they claimed they had performed. The contractor advertised that he had been in business for over 30 years (even though their contractor's license number was very new). They also said the business was family owned and that no subcontractors were employed. Personalized service and attention to details were the key reasons to use this contracting firm.

The literature provided during discovery showed pictures of homes that were generic. I found that the pictures used on the contractor's ads were actually taken from a stock photo websites that had photographs of various homes available to download. However, one specific location was shown in detail, and it turned out to be many shots of the same home, photographed from different angles and elevations (side views). It was discovered that the detailed photographed home was actually owned by family members of the contractor. For example, roofing was mentioned as one of the many available services performed by the contractor. In one included set of photographs, the contractor's family owned home was used to show a close up of roofing materials.

Fraudulent Acts are Discovered

As presented in the advertising, and apparently intended to deceive, the contractor seemed to have worked on dozens of local homes. When addresses were verified during discovery, it turned out that the majority of the homes did not even exist. As mentioned above, a good portion of the contractor's represented completed projects photographs came from an internet site that specializes in stock photography or one home owned by

family members of the contractor. This was the first layer of deception and dishonesty created solely by the contractor.

As information surfaced through discovery and depositions, it turned out that this particular contractor had been disciplined many times by the contractor's state license board, had changed business names, and was currently involved in a couple of other legal matters. Although various other homeowners later disclosed that they had checked with licensing boards to verify the contractor, the fact that numerous names and business licenses were used made it almost impossible to check the past performance or references.

The Homeowners did not Verify the Contractor's Claims

In these three combined cases, it was my opinion that the homeowners were lax in not properly investigating or attempting to verify trade references, speak to previous clients, or personally inspect the inside of homes that were represented as being part of the contractor's previous projects list.

How the Deception Developed

The sales team from the contractor personally drove the homeowner around the neighborhood pointing out locations claiming that the construction work was done by his company. The salesman repeatedly asserted that the residents of these project houses were unavailable to allow viewing of these projects, or had moved since the time of the renovations. The contractor also developed an impressive website which added false credibility. It was found, through further discovery that in the past the contractor had walked off of jobs for alleged non-payment, attempted to place liens on the properties, and had been left unchallenged for the most part. There was apparently a pattern to the contractor's business practices.

How does the Unscrupulous Contractor get away with Fraud?

In previous cases, the amount of money owed and in dispute was generally too small to pursue legally. Most of the disgruntled homeowners were advised by their attorneys to not file any action against this contractor. The claimed amounts were too small for an expensive court trial, and yet too big to take into a small claims action.

Why is this Case Different?

This time, the case was for an amount of money that was too great for the homeowner to walk away from, and the personality of the homeowner dictated that he get revenge for the unprofessional and poor treatment that the contractor had given him.

Depositions Prove Deceit

During depositions of four key members of the contractor's construction team, every possible misleading statement and non truth was used. Each person contradicted or attempted to blame someone other than himself for the "misunderstanding" with the client. Promises that were made to the homeowner and his family were brushed away as inconsequential and invalid. And, the contractor refused to make any attempt to rectify or settle the case prior to trial, further continuing to expound that the homeowner was the dishonest party in this matter. In part, the contractor attempted to shift the blame onto his sales staff, stating that he was unaware of any promises made by the sales people, and so he believed he was not responsible for the alleged misunderstandings. In all three cases, the contractors were originally non English speaking. They attempted to claim that their business practices were acceptable and normal in the country that they came from, and that all three homeowners were responsible for not fully understanding their business policies.

Among many other ridiculous claims, the contractor stated that the plans were misleading and incomplete. The problem with that statement was that the contractor had drawn, submitted, and obtained plan approval on behalf of the homeowner. The contractor's draftsmen had attached clauses to the plans stating that it was the responsibility of the contractor to verify existing site conditions prior to submitting a bid, starting work, or doing any demolition to the property. Along with the plan issues, the financial arrangements per the contract were illegal and in direct violation of the contractor code of conduct. The contract terms and conditions were so vague and ambiguous that it was nearly impossible to identify milestone payment requirements for any work performed on this project. In the state where these events took place, a pre demolition inspection is mandated by law to determine the presence of any hazardous materials such as asbestos that would need abating prior to removal. The contractor did not comply with these laws.

In each case, the contractors had claimed to have over 30 years of experience in renovating homes in the area. If that was actually the case, each contractor should have been well aware of the building requirements in that geographic area. Furthermore, it was discovered that all three contractors had not even lived in the United States for 30 years prior to these cases.

Per the construction plans, the house was to be completely demolished and a new (ground up) two story structure was to be created. After demolition, the contractor stated that he needed to restructure some elements of the house (that didn't exist anymore), and he issued his first of many inappropriate change orders.

The contractor was also guilty of hiring illegal workers that were dropped off at the jobsite. They were left unsupervised, did not know what they were supposed to do, and could not communicate with other workers at the site. Everything about the beginning stages of this project were completely out of control, and absolutely unprofessional.

Mitigation Efforts by the Homeowner

After thorough documentation, photographic evidence, and precise analysis of existing site conditions, a comprehensive report was made by Mike Panish. This "time capsule" of information captured the site and existing conditions to provide future documentation and proof by an independent party that could be used to show exactly what had occurred up to the time that the original contractor and homeowner had ended their relationship. This documentation is critical in future proceedings and is the only accepted way to prove deficiencies, preserve, and capture and maintain an official record of the site.

After the original contractor was barred from working on this project by the homeowner's attorney, a new contractor was found. The new contractor was brought in to restart the project, and eventually corrected and finished the building of the new structure. The cost to the homeowner was approximately one and a half times the total bid made by the original contractor.

Original Contractor's Attempted Defense

During depositions, the original contractor used the actual completed cost of construction to claim that the homeowner positioned him (the contractor) into building the house for well below what it actually should have cost. In reality, the higher cost was directly attributable to the original inferior work that needed to be corrected.

The contractor attempted to claim that the homeowner was sophisticated in the field of construction and actually positioned the contractor into performing the new construction work for far less than originally proposed. The contractor claimed that the homeowner always had the upper hand on this job and had been taking advantage of him.

Claim after claim was made by the dishonest contractor attempting to shift the blame onto the homeowner. As an example of the contractor's misconduct and underhanded dealings, the contractor was buying materials for the homeowner's job, having them delivered to the site, then removing them and using them on other jobs, or just returning them. This was his way of getting the homeowner of this project to pay for materials at other job locations.

Ponzi Scheme?

It seemed that the contractor was running a "Ponzi" scheme type of business, as it appeared that he had absolutely no records that could explain or support where any of the funds he had received from the homeowner had gone. He was attempting to use this money to cover past jobs or future work at other locations that he could profit from. It was also determined that the contractor would submit material bills from a supplier, claiming that the components were used on the homeowners property, and later return the materials to the supplier claiming he did not need them.

The Homeowner Prevails

After a two year period, the case went to trial. The homeowner was seeking compensation in the amount equal to the actual costs associated with correcting all of the deficient work that was performed by the contractor, plus all of the overages paid as a result of change orders that had no merit. After two weeks in trial, the jury awarded the homeowner approximately 10 times the amount that the homeowner was seeking. Fraud is often difficult to prove, but in this case it was proven without a doubt. The contractor, salesmen, and owners of this construction company were found to be personally responsible for their actions. Because the attorney filed the action correctly (as fraud), the company could not file corporate bankruptcy to avoid this judgment and all parties were held personally responsible. They all attempted an appeal, but lost.

Don't let this Happen to You

This information was compiled from Mike Panish's actual cases. Similar events and situations occurred to the three homeowners that this article was derived from. In the past, the housing market was strong, and many bad contractors were allowed to get away with defective workmanship. In the current market, there are many building contractors that are having significant problems finding work. There are even more dishonest and unscrupulous building contractors preying on the homeowner that is desperately seeking to have someone renovate their property. It is more important now to thoroughly verify all references, view comparable examples of work, and check that a contractor of choice is financially solvent prior to entering into any contractual agreement where money is tendered in advance for future services.

Michael Panish is an expert in the field of construction. He has been retained by both plaintiff and defense counsel on many homeowner vs. contractor disputes. As a consultant, construction expert, and experienced general contractor he has been involved in mediations, arbitrations and trials pertaining to contractor fraud and contract misrepresentation. He has participated in numerous court proceedings throughout the United States. He is licensed in the State of California as a general contractor, electrical contractor, cabinet and millwork contractor, door and hardware security contractor, and paint & finish contractor. Mr. Panish has offices in California and the New England area and is available for nationwide consultation, forensic analysis, inspection, report, and testimony. Mr. Panish can be reached at (818) 429-1963 or visit his website at www.ConstructionWitness.com for more information.