

CASE No. S252954

IN THE SUPREME COURT OF CALIFORNIA

The Spartan Associates, Inc. a)	
California Corporation)	After Decision of the Court of Appeal
Plaintiff)	Fourth Appellate District, Division Three
)	Case No. G055075
)	
vs.)	On Appeal from the Superior Court of the
)	County of Orange
)	The Honorable David Chaffee, Judge
)	CASE No. 30-2015-00805807)
)	
Gary Humphreys, an individual;)	
Karen Humphreys, an individual;)	
Defendants/Cross-Complainants)	
and Respondents)	
)	
vs.)	
)	
Adam Bereki, an individual, et al)	
Cross-Defendant and Appellant,)	
_____)	

ANSWER TO PETITION FOR REVIEW

WILLIAM G. BISSELL
State Bar #93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Attorney for Defendants/Cross-Complainants
/Respondents
GARY HUMPHREYS and KAREN HUMPHREYS

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I.

INTRODUCTION

This action arises out of a home remodel project which began in April of 2012 in Newport Beach, California. The respondents Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and appellant Adam Bereki (Mr. Bereki) was the contractor with whom the Humphreys contracted to perform the work.

From the beginning, work on the project did not progress smoothly and was “red tagged” i.e. shut down on at least two separate occasions by the City of Newport Beach. In August of 2013, a year and a half into the project, with the work once again at a city ordered standstill and the project far from completed, the Humphreys terminated Mr. Bereki and hired another contractor to finish their project.

This action was initiated by The Spartan Associates, Inc. (Spartan), a corporation wholly owned by Mr. Bereki and the alleged general contractor on the project, to recover from the Humphreys amounts Spartan claimed it was owed by the Humphreys.

The Humphreys filed an amended cross-complaint, the first cause of action of which was against Mr. Bereki, under California Business & Professions Code §7031(b) for disgorgement of the compensation paid by them to Mr. Bereki. The basis of the first cause of action of the amended cross-complaint was the alleged unlicensed status of Mr. Bereki at the time the contract was entered into and at the time the work was performed.

On motion of the Humphreys, which was unopposed, the first cause of action of the amended cross-complaint, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading. The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 and concluded on March 28, 2017. At the conclusion of the presentation of evidence which consisted of both the testimony of witnesses on direct examination and cross exam and the introduction of documents, the Trial Court found that Mr. Bereki was the party who had contracted with the Humphreys, that the work performed by and under Mr. Bereki required that he possess a license issued by the California State Contractor's License Board and that at no time, either at the time the contract was entered into or when the work was performed, did Mr. Bereki possess such a license. The Trial Court ruled that the Humphreys were the prevailing party on the first cause of action of the amended cross-complaint and as such were entitled to recover from Mr. Bereki all compensation paid by the Humphreys during Mr. Bereki's involvement on the project.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. Briefs were submitted and oral argument was heard on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal.

None of the recognized grounds for review by this Court of the decision by the Court of Appeal is present here and therefore Appellant's petition should be denied.

II.

DISCUSSION

NO RECOGNIZED GROUND FOR SUPREME COURT REVIEW OF THE APPELLATE COURT'S DECISION IN THIS MATTER IS PRESENT

The grounds for Supreme Court review of a decision of a Court of Appeal are set forth in the Appellate Rules of the California Rules of Court, CRC 8.1 et seq. and more particularly in CRC 8.500 (b). Each of those grounds and the reason why none is inapplicable here are discussed as follows.

A. Review is Not Necessary to Secure Uniformity of Decision or to Settle an Important Question of Law.

"The Supreme Court may order review of a Court of Appeal Decision: (1) When necessary to secure uniformity of decision or to settle an important question of law" CRC 8.500 (b) (1).

The opinion of the Court of Appeal in this matter is in accordance with well established law and does not contradict, overrule, criticize or make a distinction between its holding and any citeable case or statutory authority of this jurisdiction. However, even if this were not the case, the fact that the opinion is expressly not certified for publication or ordered published under California Rules of Court - Appellate Rule 8.115 prevents the possibility of the Court's decision being the cause or source of any lack of uniformity in

the decisional law of this State or becoming the means or vehicle by which any important question of law might either be challenged or be deemed unsettled.

B. Jurisdiction of the Appeal of the Trial Court’s Judgment was Properly in the Court of Appeal.

Supreme Court review of a decision of a court of appeal is warranted “*When the court of appeal was without jurisdiction of the cause*” Cal. Rules of Ct., Rule 8.500(b)(2).

“*The Supreme Court, and the courts of appeal, may affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had...*” Cal Code of Civ Proc §43.

While the appellate court has authority to affirm, reverse or modify a judgment, it obtains jurisdiction over a matter only when its authority is properly invoked. Leon v. Medical Bd. 22 Cal 4th 660, 669 (2000). A reviewing court may exercise its appellate jurisdiction by direct appeal when an appeal is taken from an appealable judgment or order and is timely noticed. Draus v. Alfred M. Lewis, Inc. (1968) 261 Cal. App. 2d 485, 489. In this matter, the Court of Appeal obtained its appellate jurisdiction over the case and Appellant acknowledged the proper jurisdiction thereof, when Appellant timely filed his notice of appeal from the final judgment of the trial court.

C. The Decision of the Appellate Court was With the Concurrence of the Required Majority of Qualified Judges.

Granting review of a decision of the appellate court in a civil matter is warranted “*when, because of disqualification or other reason, the decision of the court of appeal lacks the concurrence of the required majority of qualified judges*”. Cal. Rules of Ct., Rule 8.500(b)(3)

In this matter, oral argument was heard by a full panel of three justices comprised of Presiding Justice O’Leary, and Associate Justices Aronson and Goethals. The decision of the Court in affirming the judgment of the trial court was with the unanimous concurrence of all three justices as reflected in the written opinion.

III.

CONCLUSION

For the foregoing reasons, the petition for review should be denied.

Dated: December 12, 2018

Respectfully Submitted



William G. Bissell
Attorney for Defendants/Cross-
Complainants/Respondents
Gary Humphreys and Karen Humphreys

CERTIFICATION OF LENGTH

I, William Bissell, in compliance with Rule 8.504 (d) (1) of the California Rules of Court, do certify that according to the word count of the computer program used to prepare Respondent's Answer to Petition for Review, exclusive of tables, is 1,108 words in length.



William G. Bissell
Attorney for Defendant/Cross-
Complainants/Respondents

Gary Humphreys and Karen Humphrey

CERTIFICATION OF SERVICE & FILING

I, William Bissell, certify:

I am, and at all times mentioned herein was, an active member of the State Bar of California and not a party to the within action. My business address is 14 Corporate Plaza Drive, Suite 120, Newport Beach, CA 92660.

On December 20, 2018 I electronically filed, through the respective court's designated electronic filing service provider the

Answer to Petition for Review

in this matter with:

The California Court of Appeal
Fourth Appellate District, Division Three
[True Filing - Approved Electronic Service Provider]


The Orange County Superior Court
[One Legal - Approved Electronic Service Provider]

On December 20, 2018 I further served Respondent's **Answer to Petition for Review** on Appellant Adam Bereki by transmitting the brief to Appellant at:

abereki@gmail.com

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 20, 2018, at Newport Beach, California.



William Bissell