

Good Day.

May it please the court and the American People.

Thank you for making this time for me to share.

Respondents were awarded a judgement pursuant to §7031(b) of the Business and Professions Code for almost one million dollars. That's nearly three times the financial penalty for one of the highest crimes in our country, treason.

The judgment wasn't for murder, or great bodily injury. In fact, there wasn't a victim at all, and no evidence presented of any damages.

In an action at common Law, the injuries cannot be hypothetical or conjectural. There has to be an injured party and a nexus between the defendant's conduct and the plaintiffs injuries. All of which are necessary to establish standing to vest a judicial constitutional court that recognizes the Rights of the parties with subject matter jurisdiction. (Steel Co. v Citizens For Better Envir.)

In the instant case, all three of these elements are missing.

Putting this aside for the moment and hypothesizing Respondents had standing, they also failed to prove all of the elements of their claim under §7031.

They also offered false and misleading testimony and therefore abused process, and committed gross violations of due and judicial process to gain a civil advantage.

You cannot commit fraud or violate due process by making false or misleading allegations to procure the jurisdiction of a court.

An element of the offense of §7031(b) requires that the unlicensed contractor actually perform work that is required to be licensed.

Their burden of proof was to evidence that Adam Bereki and Glenn Overlay performed the work as they alleged, not SPARTAN. But they can't prove this because the best evidence shows it was SPARTAN. Just as they told us in their Motion For Summary Judgment:

"Those material facts which are undisputed are: In April of 2012 The Spartan Associates entered into an agreement with the Humphreys for the performance of home improvement work on the Humphreys condominium unit."

What Respondents haven't shared and did not present to the Trial Court and this Appellate Court is that they hired a renowned construction expert and paid him more than \$20,000 to analyze the performance of all of the work that occurred on their project. His name is Robert Brockway.

Given that I just discovered this evidence while in the process of writing this closing statement, I'll be amending the earlier motion for consideration of new evidence to include this testimony on the grounds it further evidences Respondents intent to commit fraud on the court before submitting.

Jurisdiction cannot be effectively acquired by concealing for a time the facts which conclusively establish that it does not exist. [Lambert Run Coal Co. v. Baltimore & Ohio R. Co.](#), 258 U.S. 377 (1922)

Here's what Mr. Brockway said in his sworn deposition testimony taken by SPARTAN'S counsel:

"What I had to do was take -- I went over payroll records provided by SPARTAN, and I went over the W-2s to analyze the number of men, how long they were there, and what tasks they were doing. I would match up the timing of the payroll records with the photographs that SPARTAN provided, and there was a lot of photographs. So, I got an idea of how long things went. There was some descriptions in e-mails that gave me clues to what means and methods were or were not applied to the job."

You see, he testified to actually matching up the photographs of the actual work being performed with SPARTAN'S payroll records to specifically pin point that SPARTAN performed the work.

During discovery, SPARTAN had provided hundreds of date and time stamped photographs as well as the payroll and workers compensation records that evidenced SPARTAN performed the work. These are the documents he's referring to.

It seemed Respondents strategy before trial was to claim that SPARTAN took too long and overcharged them and so this testimony of SPARTAN performing the work would be highly relevant to this cause of action.

These payroll records which include W-2's, workers compensation, and the itemized payroll of each employee as well as photographs of work being performed are undeniably the **best evidence** of who performed the work.

With the work been performed by SPARTAN, they had no standing.

These were clearly acts of calculated omission.

For evidence of these payroll and workers compensation agreements, the court can refer to EXHIBIT [35].

At trial, Mr. Bissell also told the court: "Now Spartan did perform work on the job." (RT Vol. 2, 40-18).

There is other evidence, such as that found in EXHIBIT [33] that evidences other licensed contractors also performed work. Performing construction work with a license is not illegal and not subject to the disgorgement statute...

If the trial court was going to make any judgment at all, it would have had to segregate work performed by licensed contractors from work not performed by licensed contractors and this never happened which violates due process because contracting with a license is not illegal.

Also in his deposition, Spartan's counsel asked Mr. Brockway:

Was your understanding of what the agreement was as to the scope of work limited to those e-mails or did you do anything else to determine what the scope was?

A. First of all, the original agreement I'm going to use that in quotes, "the April 5th e-mail communication," defines what I will call considered very loosely, what the scope of work is, **certainly what the intent of SPARTAN was when they started the project."**

Not Adam Bereki.

Not Adam Bereki and Glenn Overlay.

Spartan.

Later on, Mr. Brockway also tells us on Page 39 of his deposition:

"Spartan was terminated on or about 8-28 of 2013."

Well, if Spartan had never been hired or performed work, how could it have been terminated? We find evidence of this termination at EXHIBIT [38], a letter, from Respondents, right as the project was ending they sent to SPARTAN. Again SPARTAN, not Adam Bereki and not Glenn Overlay.

In both Respondents declarations in their Motion For Summary Judgment, they claim they only entered into an oral agreement with Adam Bereki.

There were nearly a hundred pages of agreements entered into evidence in this case which have been submitted to this court, and there are at least a thousand more emails that were never admitted in support of these documents.

Clearly this amounts to far more than an oral agreement.

But what's most disturbing again is this was the same Motion For Summary Judgment, where they claimed the undisputed facts were that they had contracted with Spartan and that Spartan performed the work.

It was the same Motion where they claimed the April 5th email's earlier referenced by Mr. Brockway, were its agreement with Spartan, just as Mr. Brockway claimed in this part of his deposition.

In relation to these April 5th emails, Mr. Bissell told trial court— And this is VERY significant. He said:

"There simply was no other contract. There was no contract at any time proposed, offered, suggested by Spartan Associates and the Humphreys or proposed to the Humphreys."

This is not true. You've seen the exhibits of additional agreements for yourself.

If it was true, then on what factual foundation and legal basis did they file the Motion For Summary Judgment where the contract was with SPARTAN?

There is substantial authority to the effect that a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. *Treager v Friedman*. 79 Cal. App. 2d 151

EXHIBIT [31] the design presentation created by Spartan also completely disproves this as do the emails submitted in the Motion For Consideration of New Evidence.

The **BEST EVIDENCE** in a near million dollar construction project are the building plans and permits, evidenced by EXHIBIT [34] admitted by SPARTAN. The plans evidence the scope of the work to be performed and the general contractor who will be performing that work.

To be clear, these plans were another agreement. And they were proposed, offered, and suggested by Spartan to Respondents after that April 5th email series, contrary to Mr. Bissell's false representation. Respondents approved the plans and made changes of their own as evidenced in the MCNE and EXHIBIT [31].

The plans and permits issued by the City of Newport Beach list SPARTAN as the general contractor, not Adam Bereki or Glenn Overley.

The building plans are clearly evidence of additional agreements in this case. What's more is that they don't align at all with the April 5th email.

As part of their burden to prove who performed the work, it seems reasonable they could take the work in that email and match it up to a picture of the work actually done on their project.

They failed to do this as well because the work in that email either never happened or was radically changed.

The work performed is found in the building plans.

After the April 5th emails, they bought a second adjacent unit, commenced a structural remodel of the entire building, deleted a kitchen, added a bathroom, and ultimately had to repair tens of thousands of dollars in damage to a downstairs unit owned by another family. Please verify none of this work is found in that April 5th email.

At the end of the day though, it doesn't really matter what anyone testified to on this issue. Under both the "common law" of contracts and UCC, Receipt and/or acceptance either of goods or [benefits] or of the price constitutes an unambiguous overt admission by both parties that a contract actually exists.

Clearly they received benefits in the form of vacation home remodel work they requested and never disputed this. They offered no testimony at trial whatsoever about any construction related defect issues upon which they lawfully rejected pursuant to the UCC or suffered any injury therefrom. In fact, they intentionally severed these issues by their Motion for Severance.

As Mr. Brockway did, we simply need to look at the best evidence of who performed the work.

Spartan submitted evidence of this to the record and it was not disputed by them at trial.

We have a meeting of the minds, performance, and consideration.

It is also abundantly clear I was a very active part of this project. I had a significant friendship relationship with Respondents son and brother whom I was a police officer with here in Orange County.

Spartan had completed more than a hundred thousand dollars of work for them as well as Mr. Humphreys business. This previous work is how Spartan got this job.

I was Spartan's license Qualifier and Responsible Managing Officer.

Here is what the Contractors State License Board says about each of these positions:

Every license requires a qualifying individual, or "qualifier," who is the person listed in CSLB's personnel of record, that has demonstrated his or her knowledge and experience through the application process, and **holds one or more license classifications.**

(Yes, it says that as a result of qualifying, the qualifier holds a license...)

It continues..."Qualifiers must exercise **direct** supervision and control of construction operations."

CCR section 823 further defines "direct supervision and control" as follows:

b) For purposes of 7068.1 of the Code, "direct supervision and control" includes any one or combination of the following activities: supervising construction, managing construction activities by making technical and administrative decisions, checking on jobs for proper workmanship, or direct supervision on construction sites.

I definitely performed these duties, which included being in direct phone and email communication with Respondents.

They're trying to separate the chicken from the egg and it just can't be done.

I'd like to briefly put all of this evidence into further context before concluding:

Back before a lawsuit was even filed, Spartan's counsel sent Respondents a letter– it was submitted in the Motion For Consideration of New Evidence as EXHIBIT [A4-1]. They responded to that letter. If they truly had no idea who Spartan was and had never formed an agreement with Spartan, we should see that immediately as an affirmative defense in this letter. Instead, we find the opposite. Here's a quote from the letter: "This office represents Mr. and Mrs. Humphreys in connection with the dispute pending between the Humphreys and your client Spartan Development concerning Spartan's activities on the project consisting of the remodel of the Humphreys/Laughran residence at 436 Via Lido Nord.

Subsequent to that letter, a lawsuit was filed against them by Spartan. They filed counter claim against Spartan and later the Motion For Summary Judgment and stated the undisputed facts were that they had contracted with Spartan.

They hired a construction expert who analyzed all the work on the project and gave sworn deposition testimony Spartan performed work.

Their counsel represented to the court at trial Spartan performed work and then misrepresented to the court there were no other agreements when in fact the record reflects otherwise.

The building permits evidencing approved plans listed Spartan as the general contractor. They also stated in their Motion, Spartan was the general contractor that performed the work and it was not illegal.

Spartan's sign was posted on the building during construction.

Spartan received hundreds of thousands of dollars in direct compensation.

Spartan provided evidence of its payroll and workers compensation service contracts to provide labor for the project.

Spartan provided evidence of multiple contracts with sub contractors for work it hired them to perform.

But there's still a giant elephant we haven't addressed:

What happened to Glenn Overley?

They testified to have formed the central agreement of this case with someone they never made a party, never deposed, never called as a witness, and according to them never even spoke to?

I believe the very first time we hear about him is at trial or after discovery had closed... which too, evidences another part of their intent to violate due process.

The submitted declaration by Mr. Overley in the MCNE affirms all of the evidence Spartan provided in this case.

Again, you cannot give false or misleading testimony to substantiate your burden of proof to gain the jurisdiction of the court to rule in your favor.

It is required that you prove each and every element of the offense in order to vest the court with jurisdiction over the subject matter. Not 1 or 2 of the 3.

The evidence is clear: The three of them gave false and misleading statements and testimony to gain the court's jurisdiction to render judgment in their favor to defraud me, under color of law, of nearly one million dollars.

Then, when I attempted, given my little training and experience in the practice of Law, to reveal this behavior to the court, both they and the Court initially ignored me and then ultimately sanctioned me for another \$1500. The Clerk unlawfully even admitted to denying one of the motions I made, which ultimately never received a hearing commensurate with judicial process.

I then asked the Court to provide a details of its findings of facts and conclusions of Law so I could present an meaningful and substantive appeal. As far the Court's decision was concerned, at that point, all I had was an unsigned Minute Order that didn't even state the section violated let alone how

the Court had arrived at its decision. The Court then denied this request despite nearly a century of case law to the contrary requiring it and in violation of *Miranda v Arizona* by using local rules to deny substantive rights. This requirement is even necessary in administrative hearings, See Gov't Code 11425.10 (6) and another violation of judicial process.

Another of my concerns was how the trial court could determine or rely on a presumption of my incompetence in construction by legislature without a hearing. That is specifically a bill of attainder and violation of the separation of powers. Presumptions are not a means of escaping constitutional restrictions. And even if it was presumed I was "incompetent" how was this possible given I had passed the qualifications for Spartan's license. At that point, "competency" becomes simply a means of paying a tax for a license which is far beyond the scope of police power regulation.

The case of *Windsor v McVeigh*, 93 US 274, speaks of this issue: "It is a rule, said the learned judge, founded in the first principles of natural justice that a party shall have an opportunity to be heard in his defense before his property is condemned and that charges on which the condemnation is sought shall be specific, determinate, and clear." The judge went on to characterize proceedings to the contrary as "trampling under the foot of all the doctrines of international law and but a solemn fraud if clothed with all the forms of a judicial proceeding. Jurisdiction is the right to hear and determine, not determine without a hearing.

The trial court also awarded \$495,000 of monies paid by a separate entity, Humphreys and Associates, Inc., who was never a party to this action, to Respondents. This was another violation of due and/or judicial process.

Until Respondents were able to evidence a violation of the offense— and all of its elements— the trial court was not empowered to adjudicate their claim in their favor as there was no evidence of a violation of the legislative act. It therefore never obtained jurisdiction over the subject matter.

Getting no relief, I motioned to dismiss the judge for cause. One would expect such a motion to be heard even under the pretense of impartiality by a separate judge. But instead, the same trial judge ruled on this motion... It's evident the judge was not able to be neutral or partial in this case. This was yet another violation of judicial process.

In summation:

It is a felony to conspire to commit a crime or violate due process under 182(a)(1)PC.

It's burglary to enter any building such as a court house with the intent to commit grand theft or any felony.

It's forgery under 470PC to submit an inauthentic order for judgment when that order is based on fraud or other intent to commit a crime.

It's perjury under 115PC to then to take that official document and file it with county clerk.

And a federal crime under 18 USC 876 to take that forged document and serve it using the United States Mail.

It is a felony under §550 PC to make a false claim for injury or damage, as they did filing a claim against Spartan. But they also filed claims against two other companies SureTec and Old Republic Surety, the companies which provided bonds for Spartan, when their testimony at trial was they never believed they had any such agreement with Spartan.

If in my official capacity as a police officer I did anything even remotely suspect of violating criminal law, I would have been terminated instantly. Mr. Bissell is an officer of this court and has clearly violated his oath of office.

Based upon all of the foregoing, the briefs, and other Motions I submitted in this matter:

I ask this court to declare the judgements in this case (including the award for sanctions) void for want of jurisdiction, to dismiss, with prejudice, Respondents remaining causes of action and either award damages for my time and expenses or remand this case back to a trial court with a different judge for a hearing on this issue.

I have been injured financially, professionally, physically, and emotionally.

In conclusion:

California was admitted as a common Law State in 1850. It was not admitted under the Napoleonic Code or Roman Civil Law.

The California Constitution also declares that all courts are courts of record, meaning they proceed according to the course of the common law. That is, there must be a party whose injuries are actual ,not hypothetical and traceable to the defendants conduct.

Being this Appeal is a direct challenge to jurisdiction, I brought a copy of our Constitution from the National Archives from which all jurisdiction is derived. Under the judicial article, we find four jurisdictions. They are, common Law, equity, admiralty, and maritime.

We know this action didn't proceed under common Law and California courts have parenthetically ruled there are no equitable remedies to a cause of action under §7031.

It is Respondents burden to evidence the unequivocal facts upon which the jurisdiction of the trial court proceeded but they have failed to do so. So before they do anything else, I ask they show us where exactly in this foundational governing document the jurisdiction they've invoked and proceeded upon is found.

Thank you.