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Part Two: New Jersey's "Home Improvement Practices" Administrative Regulations

In this second article (which is part of a multi-article series) we will continue to examine the often overlooked administrative regulations titled "Home Improvement Practices" contained in the New Jersey Administrative Code. N.J.A.C. 13:45A-16.1 et seq.

In the last article of this series (the Spring 2004 issue of The Advocate) we learned that the "Home Improvement Practices" regulations apply only to residential projects. But what about improvements made to mixed use properties that include both residential and non-residential elements?

Mixed Use Properties

The issue of whether contracts for improvement of mixed use properties are subject to the "Home Improvement Practices" was examined in the case of Marascio v. Campanella, 298 N.J.Super. 491 (App.Div. 1997).

Campanella was one of two shareholders of S & N Realty (S & N), the corporation that owned the subject property. Campanella argued on appeal that (1) the Consumer Fraud Act (the Act) barred any recovery by Marascio; (2) the purported oral contract was unenforceable because Marascio and Campanella

did not agree to an essential term; (3) Marascio presented insufficient evidence to support a claim for quantum meruit; (4) Marascio's claims were against S & N, and therefore, the trial judge erred by entering judgment against Campanella personally; and (5) the trial judge's findings are manifestly wrong, requiring reversal.

Campanella and his partner, Sidney Wilchens, each owned a 50% interest in S & N. The property contained a three-story building with an office on the first floor and apartments on the second and third floors. On October 1, 1991, S & N contracted in writing with Judd Latona of Latona Construction Company, a general contractor, to renovate the building. Marascio, an electrician, was hired by Latona as a subcontractor to complete the necessary electrical work associated with the renovation under Latona's contract with S & N. Marascio was paid \$24,000 by Latona for the work he completed as the subcontractor.

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Great Quotations

"People hardly ever make use of the freedom they have, for example, freedom of thought; instead they demand freedom of speech as a compensation."

- Kierkegaard

"Liberty means responsibility. That is why most men dread it."

- George Bernard Shaw

This article was written by Leonard S. de Palma, Esq.

Marascio claimed that because of mistakes or omissions on the blueprints (which were not allowed into evidence), extra electrical work was necessary. According to Marascio, Campanella visited the property every day to check the progress of the work and that during these visits Campanella routinely instructed Marascio to complete the "extra" work. Campanella denied this. Marascio claimed that this extra work included putting missing washers in the kitchens, better lighting in the apartments, additional switches, running cable T.V. and telephone wires, additional lighting in the office, exterior lighting, and an intercom system.

"Investment Situation" Argument Rejected

Campanella asserted that Marascio was precluded under the Act from enforcing any alleged oral contract for extra electrical work, reasoning that the property was not residential and the Act was not applicable because Campanella was not a home owner or occupant of the premises, but was involved in an "investment situation."

Marascio, relying on Hambright v. Yglesias, 200 N.J.Super. 392, 395 (App.Div.1985), contended that courts should consider the nature of the ownership as well as the use of the property when determining whether a particular property is residential or commercial. He reasoned that an apartment building in which the owner does not reside constitutes a commercial property. Marascio contended that Blake Construction v. Pavlick, 236 N.J.Super. 73 (1989), overruled on other grounds by, R. Wilson Plumbing v. Wademan, 246 N.J.Super. 615 (App.Div.1991), upon which Campanella relied, only considered the building in that case as residential property because the defendants lived in the building.

Thus, the issue before the Appellate Court was whether a commercially owned, unoccupied, part residential, part commercial property qualified as a residential, non-commercial property for purposes of the Consumer Fraud Act and its regulations. The Appellate Court concluded that it does. In support of its decision, the Court noted that the fact that

Campanella's corporation owned the subject property for investment purposes was not determinative. The Act protects corporate as well as private consumers. Citing Coastal Group v. Dryvit Systems, 274 N.J.Super. 171 (App.Div.1994): "[T]he protections of the Consumer Fraud Act extend to the purchase of merchandise for use in business operations...."; citing also Hundred East Credit Corp. v. Eric Schuster, 212 N.J.Super. 350, 355 (App.Dv. 1986): "Nothing in [the] statutory language suggests that the Act is inapplicable to the sale of merchandise for use in business operations.... And a corporation or other business entity is a 'person' entitled to sue under the Act."

Given the broad scope of the Act and its liberal construction, the Court held that the mere fact that a corporation purchased the goods for use in its business did not preclude invocation of the Act and its regulations. Accordingly, there was no requirement that the owner of the property reside there or that the owner be a natural person and not a business entity. Indeed, the absence of such restrictive provisions was held to enhance the Act's broad purpose -- to protect against fraudulent and unconscionable practices in the sale of consumer goods and services.

***Part Three of this series appears in the
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