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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

B.A. RETRO, INC., Plaintiff, Cross-Defendant and Appellant, v. D.L. FALK CONSTRUCTION, INC., Defendant, Cross-Complainant and Respondent.	A152382 (Contra Costa County Super. Ct. No. MSC1401229)

B.A. Retro, Inc. (Retro) was a subcontractor on a project on which D.L. Falk Construction, Inc. (Falk) was the general contractor. Retro sued Falk for some $260,000, the amount it claimed Falk owed it. On the eve of the date set for trial Falk learned that Retro had begun work on the job at a time when it did not have workers' compensation insurance, the effect of which was to cause an automatic suspension of its license. The trial was continued, and more pleadings ensued, including Falk's cross-complaint for disgorgement of the $440,447 it had paid to Retro. The case proceeded to a court trial on the licensure issue, at the conclusion of which the court ruled against Retro, rejecting its claim of substantial compliance with the licensing law, and entered judgment against Retro on both its claim and Falk's disgorgement claim. We affirm.

BACKGROUND

The Parties and the Project

In 2013 Falk entered into a contract with the Central Contra Costa Sanitary District under which Falk was to be general contractor on district project No. 8226, "Seismic Improvements for HOB" (project). The project involved seismic upgrades for the District in Martinez, which required removing various existing finishes to expose the building's structural steel columns; strengthening the columns by welding on specially manufactured pieces; testing the columns; and restoring the building's finishes to make it ready for occupancy.

Falk signed a subcontract with IBS USA, Inc. (IBS) to perform the structural steel work on the project, and listed IBS in its bid to the owner. Apparently some issues arose between Falk and IBS, the upshot of which was that in May 2013 Falk entered into another subcontract for the steel work on the project, with Retro. The effective date of the Falk-Retro contract was May 24.

We know little about the size or make up of Retro, as there was little evidence of it at trial. The only witness was Autumn Meadow of Retro who, when asked her job there, answered: "Everything. I am listed as the president. I do most paperwork. I am a secretary. I do the estimating. I do project management. I do contract management. I work in the field. I fabricate in the shop." Meadow occupied the "[e]verything" position for 28 years. She is also the "RMO," the responsible managing officer of operations.

There was mention of Meadow's husband, Daryl Heidecker, who apparently worked at Retro, perhaps as an employee, but who had undergone heart surgery in 2014. There was also a vague reference to "Kate," who Meadow called "my partner." There was no mention of any permanent employees, and Retro's certified license certificate showed that at the time of the subcontract with Falk Retro had an "exemption from workers' compensation" insurance, which exemption is available only if the contractor had no employees during that period. The certificate indicated that the exemption was effective from June 9, 2012 to June 7, 2013.

Retro has a California contractor's license, which it first obtained in May 2004. The license has special classifications, C51 and C60, respectively, in structural steel and welding. Meadow is the RMO for C51, her husband the RMO for C60.

On or about May 28, Retro began sending workers to the project, who as best we understand were from the union hall. Their last day on the project was September 11. Retro's work on the project was, as Meadow acknowledged, dangerous: it included working "with heavy metal objects"; lifting "big plates from trucks into the work site"; some "welding" that required a "fire watch" mandated by law; and similar dangerous activities.

The total amount billed by Retro for the three-plus months was $660,409.19, representing some 5,800 hours of work performed. The total paid by Falk was $440,447.27.

The Proceedings Below

The Pleadings

In June 2014 Retro filed a complaint against Falk and its two sureties, followed in August by a first amended complaint, the operative pleading here. It alleged six causes of action: (1) breach of contract; (2) claim on payment bond; (3) quantum meruit; (4) account stated; (5) violation of statutes; and (6) claim on stop notice. Retro sought $259,961.52, the amount it claimed was then owed it by Falk. And the complaint alleged, as required, that at all relevant times Retro was properly licensed.

Falk filed an answer and also a cross-complaint against IBS, the first steel subcontractor, alleging claims for breach of contract and contractual and equitable indemnity.

In November 2014, the case was set for nonjury trial on March 11, 2016, ultimately to be continued numerous times. Meanwhile, Falk sought discovery on the issue of Retro's licensure, and according to Falk's brief—unrebutted in Retro's reply—Retro produced no affirmative evidence regarding its licensing history, and claimed it lacked documents identifying its workers' compensation insurance. Sometime on the eve of trial, and after the close of discovery, in response to a trial subpoena Falk

obtained materials from Retro's insurance broker showing that Retro did not have workers' compensation insurance until after it had performed work on the project for some two weeks.

On October 21, 2016 Falk and its sureties filed an updated trial brief indicating among other things Falk's intent to seek leave to file a cross-complaint against Retro for disgorgement, based on the recently discovered information about the license. At an October 26 case management conference trial was reset for June 9, 2017.

On November 21, Falk filed a motion for leave to file a cross-complaint. Retro opposed it, on both procedural and substantive grounds. Falk filed a reply, and on January 27, the court granted the motion, following which Falk filed its cross-complaint seeking disgorgement of the $440,447 it had paid Retro.

The Trial

Against that background the case proceeded to a nonjury trial, on the threshold issue of licensure, a trial that was brief indeed. The only witness was Meadow, who testified for one day. That testimony, along with various documents introduced, revealed the following facts.

Meadow acknowledged that Retro's subcontract with Falk had insurance requirements that among other things required a workers' compensation policy, being told that in one of the first emails she received from Falk, on May 22. Meadow forwarded that email to her insurance broker, Austin Myer of PSA Insurance, probably on May 23, and apparently also talked with Myer that day, advising him that work on the project would begin on May 28. It would develop that the workers' compensation policy did not take effect until June 7.

Meadow did not receive any written confirmation showing there was insurance in place from the first day of the project, nor did she claim to have any verbal confirmation of coverage either. Although her broker Myer and an insurer exchanged documents—including a belated attempt to backdate a policy—Meadow did not claim to be aware of any of the documents. Despite this, Meadow admitted she instructed workers

to perform work on the project without having received any insurance certificates, or any other documents relating to insurance. Her testimony could not have been clearer:

"Q: With respect to an insurance company, an actual insurance company providing actual statutory workers' compensation coverage, you had more than a dozen people work more than 700 hours, and there was not a single document in your file from an insurance broker, from an insurance company, confirming that you had worker's comp coverage in place for those two weeks, correct? [¶] A. Correct."[1] In fact, Meadow admitted it was not until years after the project was completed that she learned when Retro's workers' compensation insurance went into effect.

Meadow also admitted the obvious: had there been a workers' compensation claim by one of her employees before a policy was in place, it would not have been covered. In short, Retro's efforts to secure the required workers' compensation insurance consisted of a single phone call by Meadow to the broker requesting coverage. And she allowed the work to proceed for almost two weeks without a single confirmation, written or verbal, that insurance coverage had been obtained, making no efforts to follow-up after the initial call.

This was not Retro's first experience with a licensing issue. Meadow had testified at deposition that Retro's license had lapsed once, in 2009 or 2010. At trial Meadow was badly impeached, as third party discovery—and Retro's own certified licensure certificate—revealed that its license history was littered with suspensions, including at least four in 2012 alone: February 24, June 6, August 28, and November 18.

One last subject of testimony involved Meadow's position that Retro's contributions to a workers' compensation trust fund administered by the union satisfied its obligation to obtain workers' compensation insurance. Thus, Meadow stated her belief was that she did not need statutory workers' compensation insurance, testifying that she was not concerned about whether Retro had a workers' compensation insurance policy as of May 28 because the union trust fund was providing workers' compensation

[1] On May 28 Meadow sent nine workers to the site, who worked a total of over 200 hours the first week and over 475 the second.

coverage. So, Retro argues in its opening brief, Meadow "did not have any concerns that these workers did not have worker's compensation coverage because BA Retro was paying into the trust fund for such benefits," citing this question and answer: "Q. You were working for two weeks doing welding and steel work without written confirmation there was any workers' compensation insurance in place, correct? [¶] A. As far as I was concerned, my ironworkers were covered [by the union], and that's what mattered to me."

Retro submitted no evidence that the union trust fund satisfied the statutory requirement. And as Falk demonstrated, a simple price comparison—Retro's actual statutory workers' compensation insurance cost $22.96 per hour, its supplemental union benefit $0.035 per hour—demonstrated that it was unreasonable for Retro to rely on the union supplemental benefit as a workers' compensation substitute.[2]

At the conclusion of the evidence the trial court advised counsel that it wanted to give "the impression I have and the questions that I have. None of this is binding until I am convinced. I am not yet convinced. But I want to tee up the agenda for argument." The trial court then spoke for several pages, at the conclusion of which it said "Those are my initial thoughts. At this point I am inclined to rule against" Falk, and "so I will let [Mr. Barron, Falk's counsel] address that."

Barron began his response, resulting in questioning from the court, leading at one point to the following exchange: "MR. BARRON: So I think this really is at best a substantial compliance test." The court responded: "I agree." Barron then went on at length, noting how substantial compliance requires that Retro show "reasonableness and good faith," elaborating:

"Again, it requires reasonableness and good faith, okay. So it would be one thing, it would be one thing if someone came to Court and said I have a pristine history on my

[2] The union trust fund claim was such that the trial court would later state: "There really isn't even any pretense that there was adequate coverage here. There was none whatsoever. And the coverage required by the worker's comp statute and the licensure was more than the union was going to provide. And I don't think that Ms. Meadow had any proper basis for assuming that she had this coverage was sufficient."

license issues. I have been operating for 20 years. The CSLB has never written me. They send me an occasional accommodation for a job well done. And on this one occasion, I slipped up. I had a confirmation e-mail from my broker. I thought it was enough. In retrospect I wish I had gotten the policy itself. But I thought I got what I needed.

"This is not reasonableness. This is not good faith. Everything about B.A. Retro's record shows recklessness with respect to the license laws. We have had testimony about whether I don't know if I read these letters or not. I may not have. They may not have been important that I got a second suspension because I was already dealing with the first.

"We have a contractor who is the responsible managing officer. That means by statute, by the business and professions code, she is responsible for the operations. You can't outsource that to your broker. The workers' compensation piece of the license law is fundamental.

"Of the things that people find themselves unlicensed for, there are some things that sound like technicalities, right? This RMO, for example, under the license law, if your RMO leaves the company, which is why I asked about Mr. Heidecker, or is no longer is [*sic*] the responsible charge, you have 90 days to file a change in status. If you don't, that entity is unlicensed.

"That sounds like a technicality if it is day 91. Maybe the $12,000 bond lapses for two days. Big deal. $12,000 doesn't go as far as it used to, right? But if there is one thing that is fundamental to the license law, which is why the business and professions code says this results in automatic license suspension is worker's comp, because the Court is exactly right. Those people were out there doing dangerous work, and there was no protection for them, there was no protection for them.

"And I think some of the evidence we have seen about unsatisfied judgments and some of the other financial issues that B.A. Retro was dealing with, if there had been no insurance and there had been an accident, I would respectfully say that B.A. Retro was in no position to cover those folks.

"And so then who would it have been a problem for? It would be a problem for D.L. Falk as controlling the site. It would have been a problem for the district, the public entity controlling the site. Those injured workers might ultimately have been covered, but it wouldn't have been through insurance. It would have, perhaps, been through a public entity. This is fundamental. And everything about the record of B.A. Retro shows they were acting not in good faith, not reasonably, they were acting recklessly. This is not what a normal CSLB file looks like where you are basically penpals with the CSLB and getting a new letter from them every month, suspension on top of suspension. And the idea was not that the workers compensation notice of intent to suspend was identical to this situation, it was not."

When Falk's counsel concluded, the court turned to Retro's counsel, and this colloquy followed: "Mr. Crone, let me tee the issue up in terms of diligence. I have never been a contractor, but I would think it is contracting 101 that you make sure you have got insurance coverage before you start the job. Okay?

"MR. CRONE: Yes.

"THE COURT: In this case, I have no evidence of any communication between your client and the broker besides what she testified to and what she or someone in her office recited to D.L. Falk, that, gee, I submitted it. What I am not seeing is something saying—well, the broker knowing there is a May 28th start date ought to have gotten his butt in gear and gotten coverage by May 28th. And if he couldn't do that, should have made sure he got retroactive coverage to May 28th.

"What I am not seeing is anything from your client or the broker that says, yeah, we know that. We will take care of that.

"Isn't it diligence a contracting 101 to make sure you have at least got something from the broker saying, yeah, you are covered?"

Responding, Retro's counsel Crone went on for some 13 pages, at which point the court briefly returned to Falk's counsel Barron. Finally, after some musings, the court concluded the session with this:

"Now, I think I already know the answer to the question I am about to ask. The reason I say that is because the briefs I have already read in this case are high quality and thorough. And if this case law exists, I would already know about it. [¶] Having said that, I invite you to see if there is case law dealing specifically with the substantial compliance doctrine in the setting of a miscommunication between the contractor and its insurance agent as to whether what was being requested was coming through or not." With that, the court invited further briefing, with the proceedings continued for two days.

The proceedings resumed on June 14. The court stated that it had read the supplemental briefs and considered the issues further, and then stated its ruling on the record. The court began as follows:

"In a nutshell, I am agreeing with Falk on this issue. I—yes, it is true, that the same standard applies regardless of the nature of the violation, but I think that what kind of effort is required reasonable, or what kind of lack of knowledge is reasonable does depend on the severity and potential consequences of the particular problem raised.

"First, I do believe that the amendment deleting the second element of the statute is not retroactive. As I said on Monday, it makes no sense to me that we would reach a different result trying this case last December as opposed to last January. Having said that, my ruling would not be different if I were ruling only under the 2017 statute.

"There are two different elements of reasonableness under the previous statute. One is the reasonableness and good faith of efforts to maintain licensure. The other is whether the contractor's ignorance of their lack of licensure is something that they did not know or reasonably should not have known. And the latter I believe bears some resemblance to the former, they both depend on reasonableness.

"I am convinced that what is reasonable has to depend to some extent on the seriousness of the potential violations."

Then, after briefly discussing—and dismissing—two cases relied on by Retro, as not involving possible serious repercussions, the court continued:

"Worker's comp is different. What we have here is the absence of worker's comp coverage as required by the statutes for a period of about two weeks. If there had been an

injury during that time, either to a B.A. Retro employee or to someone else on the job site, it could have had catastrophic consequences here. I am glad that there was none, just as I was glad when I was trying DUI cases that nobody got killed or injured by the driver driving under the influence. But the issue being addressed is the risk that simply cannot be run here.

"I held, or I found that [Retro] did, in fact, take steps on May 23rd to try to secure the coverage that they needed. And the record, contrary to the contention of Falk, shows that their broker was, in fact, requesting coverage as of May 23rd. But in my view in light of the seriousness of worker's comp, it requires more than just an initial phone call saying get me some insurance. There has got to be some confirmation you got it. You don't send people to the job site unless you have got the insurance, or at least some strong reason to think you have got the insurance. There is nothing here to say, for example, I have done this a hundred times and every time it turns out okay.

"There wasn't a phone call. There wasn't an e-mail saying, Hey, I am sending people out tomorrow. Do I have coverage?

"Now what would have happened if there had been an actual but incorrect insurance from the broker? Don't worry about it, I got you, you are covered. That's not before me. That might make for a more difficult decision.

"Here there was no follow-up at all. And it is not just a question of a screw-up by the broker, for all the parties knew there could have been some other reason why no policy was going to be forthcoming. It could have been some lawsuit pending somewhere that they didn't know about. Indeed one such reason would have been the occurrence on May 28th or May 29th of a serious accident on this job. It would have resulted in there being no coverage here.

"The evidence shows that the reason why there was no follow-up was Ms. Meadow's belief that she had coverage through the union. Now, Ms. Meadow struck me as an honest witness who was telling the truth. Therefore, I have no reason to question that she actually entertained the belief that she testified to entertaining. I do not conclude or hold that that belief was reasonable in the circumstances, even as to BAR employees.

"There was at best a failure of inquiry or investigation as to just what coverage there was as opposed to the coverage that Ms. Meadow took the steps to acquire. I mean, if she really thought this was adequate, why even go after the other coverage?

"And as to non-employees of [Retro] or for people—well, I guess I should characterize it not as non-employees, but not as signatory steel workers. There really isn't even any pretense that there was adequate coverage here. There was none whatsoever."

On July 5, the court entered its order regarding entry of judgment holding that Retro's "contractor's license was suspended from May 28, 2013 through June 6, 2013," and that Retro "was not in 'substantial compliance' with the license laws during the same period, and therefore cannot proceed with its affirmative case against Defendants." And because the absence of a license required disgorgement, the trial court ruled for Falk all the way. Judgment was entered in favor of Falk and against Retro on all of its causes of action, and also in favor of Falk on its disgorgement claim, ordering Retro to disgorge $440,447.27.

Retro filed a timely notice of appeal.

DISCUSSION

The Applicable Law

Business and Professions Code section 7000 et seq.,[3] the "Contractors' State License Law" (CSLL), provides a "comprehensive scheme which governs contractors doing business in California." (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 282.) "The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business." (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995.)

[3] All undesignated statutory references are to the Business and Professions Code.

Two provisions of the CSLL are applicable here: section 7031, subdivisions (a) and (b). Subdivision (a) provides that no person "engaged in the business or acting in the capacity of a contractor" can bring an action for compensation for work requiring a contractor's license if the person was not properly licensed at all times during the performance of the work. Subdivision (b) permits a person "who utilizes the services of an unlicensed contractor" to bring an action for disgorgement of "all compensation paid to the unlicensed contractor." (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 895.)

As to the burden on the respective parties, proper licensure is a required element of a plaintiff contractor's case in chief, not just a special defense to a disgorgement cause of action. (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 425; *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 517 ["By statute, a contractor seeking damages must allege and prove it held a valid license before it can prosecute any claim for damages."].)

Our Supreme Court has acknowledged that the statute, while punitive, is necessary to protect an important public policy. (*Hydrotech Systems, Ltd. v. Oasis Waterpark*, *supra*, 52 Cal.3d at pp. 995, 997.) Or as the court earlier put it, " ' "Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state." ' " (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, *supra*, 36 Cal.4th at p. 423.) In short, as a result of this strong public policy, the law will apply regardless of the equities. (*Montgomery Sansome LP v. Rezai* (2012) 204 Cal.App.4th 786, 794.)

Section 7125.2 provides that "[t]he failure of a licensee to obtain or maintain workers' compensation insurance coverage . . . [results] in the automatic suspension of the license by operation of law . . . ." As the cases put it, a contractor's license is considered "automatically suspended by operation of law as of the date the contractor is required to obtain workers' compensation insurance but fails to do so." (*Vebr v. Culp*

(2015) 241 Cal.App.4th 1044, 1047, citing *Wright v. Issak* (2007) 149 Cal.App.4th 1116, 1121.) And the automatic suspension runs from the date the contractor was required to obtain insurance coverage, or the coverage lapsed, until the insurance is obtained or maintained. (§ 7125.2, subd. (a).)

Retro Failed to Prove Substantial Compliance

Here, there is no question Retro was unlicensed as a matter of law from May 28, the day it started work on the project, until June 7, the date the newly acquired policy began providing coverage.

Retro's position is premised on section 7031, subdivision (e), codifying the substantial compliance doctrine, which is in essence an exception to the forfeiture rule. Subdivision (e) was amended in 2016, chapter 244, section 1, and, as amended, provides as follows: "The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, notwithstanding subdivision (b) of Section 143, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure." (§ 7031, subd. (e).) The burden of proof is on the contractor to show substantial compliance. (See *Pacific Custom Pools, Inc. v. Turner Construction Co.* (2000) 79 Cal.App.4th 1254, 1260.)

The 2016 amendment changed the predecessor statute in one fundamental particular: it eliminated what had been an additional requirement for substantial compliance, that the contractor "did not know or reasonably should not have known that

he or she was not duly licensed when performance of the act or contract commenced."[4] In sum, to prove substantial compliance under the prior version of section 7031, subdivision (e), Retro would have to prove four things, under the current version only three.

As quoted above, the trial court concluded that the 2016 amendment was not retroactive, but went on to determine that the result would have been the same under either version. The parties devote substantial briefing to the issue of retroactivity. We deem it unnecessary to wade in on the issue, as we agree with the trial court that even under the less stringent requirements of the amended statute, Retro's appeal must fail—substantial evidence supports the trial court's conclusion that Retro did not prove it acted "reasonably and in good faith to maintain proper licensure."

Before turning to an exposition of that evidence, we begin with a few observations, the first of which is that Retro did not request a statement of decision. The effect of this is, as a leading practical treatise puts it, that appellate review is "effectively limited to questions of law: The appellate court will *presume* the trial court made *whatever findings of fact are necessary* to support the judgment. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 [Cal.App.]4th 42, 61—in absence of request for statement of decision in declaratory relief action and failure to advise trial judge of any omissions or ambiguities in minute order, 'doctrine of implied findings' required inference that 'trial court made every factual finding necessary to support its decision'; . . . *Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 [Cal.App.]4th 1128, 1134-1135.)" (Wegner et al., Cal. Practical Guide: Civil Trials and Evidence (The Rutter Group 2017) ¶ 16:100, pp. 16-22–16-23.)

The second observation is that the trial court's ruling was that Retro had not demonstrated one of the requisite elements of substantial compliance, effectively

[4] A minor change was that the amendment modified the language of the last requirement, which had read that the contractor "acted promptly and in good faith to reinstate his or her license upon learning it was invalid." (See former § 7031, subd. (e) [Stats. 2003, ch. 289, § 1 (Assem. Bill No. 1386 (2003-2004 Reg. Sess.)].)

a conclusion that Retro had not met the burden imposed by it under the law—in essence, that Retro had failed to meet its burden of proof. Thus, to prevail here, Retro must demonstrate that the evidence compels a finding in its favor as a matter of law: " 'In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case. [Citations.] [¶] 'Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." ' [Citation.]" (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465–466; accord, *Roesch v. De Mota* (1944) 24 Cal.2d 563, 570–571; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 967.)

The third observation addresses one of Retro's fundamental contentions, that the evidence that came in was only from Meadow, and thus the evidence was undisputed. This, of course, ignores that there was much documentary evidence, and moreover, that some deposition testimony impeached her. But even if the testimony were undisputed or uncontested, under the "conflicting inference" rule, the appellate court must indulge all reasonable inferences that may be deduced from the facts in support of the party who prevailed in the proceedings below. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632–1633.) Put slightly differently, an appellate court will not substitute its deductions for the reasonable inferences actually or presumptively drawn by the trial court. (*Mah See v. North American Acc. Ins. Co.* (1923) 190 Cal. 421, 426

(overruled on other grounds in *Zuckerman v. Underwriters at Lloyd's* (1954) 42 Cal.2d 460, 474); *McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1102, 1111, fn. 7.) As the court said in *Milton v. Perceptual Development Corp.* (1997) 53 Cal.App.4th 861, 867, "[i]f the evidence gives rise to conflicting inferences, one of which supports the trial court's findings, we must affirm."

But assuming that none of those principles by itself defeats Retro's appeal, the evidence in the record does, demonstrating that Retro has not shown that it acted as required—"reasonably and in good faith to maintain proper licensure."

The essence of the trial court's holding was that Retro, through Meadow, did not act reasonably, "a failure of inquiry or investigation as to just what coverage there was as opposed to the coverage that Ms. Meadow took the steps to acquire." Meadow failed to act reasonably, the court concluded, particularly "in light of the seriousness of worker's comp." Other than a mere call to a broker seeking coverage, she took no action to make certain there was workers' compensation insurance in place, not a single call or a single e-mail "to confirm the coverage." And she allowed the workers to perform for two weeks without any verbal or written confirmation of coverage whatsoever. Such behavior was not "reasonable with respect to something as serious as potentially leaving the workers without sufficient coverage, and not just the [Retro] workers."

But beyond what Meadow failed to do, the record reveals many acts by Meadow that might be called willfully ignorant. A few illustrations should suffice:

Meadow was asked if the union trust fund and the statutorily required workers' compensation insurance was the same thing. She replied: "I have no idea."

Meadow was then asked about resources that she, or any RMO, could go to if she "wanted to learn about the rules and regulations of the CSLB." Meadow said there was a website, but, other than going to the website to print out a form, she "never read that part" of the website that "provided in detail the requirements for a certificate of insurance."

Meadow also did not know what the statutory requirements governing workers' compensation insurance were, because she had never looked them up, testifying

essentially that she did not have time to educate herself with respect to insurance. The record contains abundant evidence that Retro did not act "reasonably."[5]

Perhaps most remarkably of all, Meadow testified that it was not until 2016—three years after the work on the project—that she learned that Retro did not have insurance during this project. That is, asked if she had seen the policy sent to her by State Fund that referenced the June 7, 2013 effective date, she testified: "They could have sent them to me, it doesn't mean I looked at them. Honestly, I was busy."

In light of this, and while the trial court did not base its ruling on the point, it could be said that testimony supports a conclusion that Retro failed to meet another requirement of substantial compliance—that it acted properly and in good faith to reinstate its license upon learning that it was invalid. Retro took no action to retroactively obtain coverage for the unlicensed period (in the unlikely event that were even possible) and for years did not even bother to check whether or not it had coverage.

Retro argued below that the failure to have workers' compensation insurance was "merely 'a technical violation of the licensure statutes' "; it argues here that it was an "inadvertent" mistake. There is no " 'technical violation' " or mistake exception to the licensure requirement. Failing to guarantee that workers are covered by workers' compensation insurance, whether inadvertent or not, is inexcusable. Indeed, it is one of the most egregious licensure violations that a contractor can commit, mandating an automatic license suspension in the event of a violation. As the trial court stated, failing to have workers' compensation insurance "could have had catastrophic consequences here."

Retro places emphasis on the trial court's observation in its statement on the first day that it believed Meadow. And its reply brief asserts that "[t]he trial court found . . . Retro acted in good faith and found Autumn Meadow to be honest and truthful

[5] Retro's opening brief asserts that the 1994 statute "eliminated the restrictive negligence-based test." While the amendment may have eliminated the word negligence from the statute, "reasonably," the word in the current statute, certainly smacks of negligence. (See CACI No. 401 ["Negligence is the failure to use reasonable care"].)

in her testimony." This is some overstatement, as Retro's argument quotes only the trial court's observation that " 'Ms. Meadow struck me as an honest witness who was telling the truth.' " Even so, that truth included the disregard for the rules and requirements set forth above.

Moreover, the trial court's statement underscores the distinction between good faith and reasonableness. In fact, when the court announced its decision for Falk, Retro argued that the trial court's findings regarding lack of unreasonableness were inconsistent with earlier comments relating to perceived good faith. The court stated, "I don't think there are any inconsistencies . . . . [And if there are] I am, to that extent, amending my findings." Good faith may be subjective. But even assuming that Meadow subjectively believed, in good faith, that she had complied with the licensing laws, that does not—and did not—render her position objectively reasonable. (*Hydrotech Systems, Ltd.*, *supra*, 52 Cal.3d at p. 997 [courts should use an objective standard when reviewing evidence to determine the good faith and reasonableness of the nonconforming party's licensing failure].)

DISPOSITION

The judgment is affirmed. Falk shall recover its costs on appeal.

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Richman, J.

We concur:

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Kline, P.J.

_____
Stewart, J.

A152382; *B.A. Retro v. D.L. Falk Construction, Inc.*