

# THE CALIFORNIA COURT OF APPEALS GIVES GUIDANCE TO CONSTRUCTION MANAGERS

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**New Court Ruling:** Finally the courts have given construction managers the guidance they needed regarding their contractor licensing responsibilities. In the *Fifth Day LLC v. Bolotin* (March 27, 2009), the Court of Appeals (2<sup>nd</sup> Dist.) held that a **construction manager working for an owner on a private project** is not a contractor within the meaning of the licensing statutes and therefore any claims it may have against the owner are not barred by *Cal. Business and Professions Code §7031* which bars any unlicensed contractor from bringing a claim against owner for unpaid contract balances.

In a rather complicated transaction, the construction manager in *Fifth Day*, was paid a fixed development fee for performing construction management duties as the owner specifically directed. The construction manager's duties included in part (a) coordinating the design professionals and the contractors, (b) obtaining permits for the various contractors, (c) updating the budget, (d) providing performance valuations, (e) holding regularly scheduled meetings with the owner, (f) coordinating of the work between the contractors and the subcontractors, and (i) using reasonable efforts to achieve satisfactory performance from the contractor. **None of the actual construction work on the project was performed by the construction manager** rather the owner entered into a construction contract with a general contractor to complete the work to construct the project.

The construction manager was not paid the balance due on his contract and it sued the owner for breach of contract. The owner filed summary judgment motion in which it successfully claimed that since the construction manager did not have a construction license, its suit was barred under §7031. **The Court of Appeals disagreed and said that an entity which provides construction management services to a private owner developing commercial real property is not required to have a license pursuant to State Contractors Licensing Law.**

The Court of Appeals believed that the term "contractor" is synonymous with "builder" according to §7026 of the *Business & Professions Code*. It found that the construction manager had no responsibility or authority to perform any construction work on the project or to enter into any contract or subcontract for the performance of said work. Therefore, the construction manager could not be considered a contractor under the meaning providing in the Contractors State Licensing Laws.

**Final Comment:** It should be noted that in **public works projects**, construction management must be performed by either a licensed architect, registered engineer or licensed general contractor. *Gov't Code §4525 and §4529.5*. **Gibbs, Giden, Locher, Turner & Senet LLP**  
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