

presented by

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Welby, Brady & Greenblatt, LLP periodically publishes its Legal Alert Bulletin to notify its clients and others in the construction industry about court decisions and changes in the law in the Tri-State area that may affect their businesses or the way they do business. We urge you to regularly visit our website, www.wbgllp.com, to keep abreast of what is happening in the courts and law that may affect your business.

Home Improvement Contractor License – New Home

Do you need a home improvement contractor license when you perform work associated with the construction of a new home? The Appellate Division Second Department says yes, if the work you are performing, in this case landscaping, is not part of the construction of the new home's envelope.

In the reported case, the contractor was hired by the owner to perform landscaping on property he owned where he was constructing a new house. The contractor did not have a home improvement contractor license. When he was not paid, the contractor sued the owner for breach of contract and to foreclose on a mechanic's lien. The owner moved to dismiss the contractor's claims on the grounds that he was not licensed under the county and the town home improvement contractor licensing laws.

In reaching its decision the appellate court reviewed the county and town codes, finding that both excluded the construction of a new home from the licensing requirement. The question was whether landscaping was part of the construction of a new home – and the court said it was not. The construction of a new home, said the court, applied only to the building of the new residential structure, and to interpret the phrase to include landscaping work performed on the property where the new home was being constructed, would, in effect, have the court rewrite the law, which is not permissible.

Contractors who perform property improvement work, not directly part of the construction of a new home envelope, will do well to review with their attorneys the home improvement licensing laws covering the localities where they will be performing their work. If there is any doubt about whether a license is needed – obtain a license before doing the work - or risk not getting paid.

If you have any questions about the information set forth in this Legal Alert, call us at 914-428-2100. Please understand that this alert provides general information only. It is not intended to provide legal advice. We encourage you to contact an attorney should you desire to discuss specific situations for which you may need legal advice. Under the ethical rules that govern the practice of law, this communication may be considered as attorney advertising.