

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

AVL TEST SYSTEMS, Inc.,

Plaintiff,

v.

HENSEL PHELPS CONSTRUCTION Co.,

Defendant.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 13 2025

K. Rahlwes

COUNSEL

**CROWELL & MORING LLP
for Plaintiff**

**VARELA, LEE, METZ & GUARINO LLP
for Defendant**

DEPT. 3

**DATE
01/10/2023**

**CASE
NUMBER:
CVRI2301309**

RULING ON SUBMITTED MATTER RE (1) DEFENDANT HENSEL PHELPS CONSTRUCTION CO'S MOTION FOR SUMMARY JUDGMENT; AND (2) PLAINTIFF AVL TEST SYSTEMS, INC.'S MOTION FOR SUMMARY JUDGMENT

Brief Statement of Ruling

The Court grants Defendant Hensel Phelps Construction Co.'s motion for summary judgment.

The Court denies Plaintiff AVL Test Systems, Inc.'s motion for summary judgment.

As Plaintiff AVL's only cause of action was for declaratory relief, the Court shall vacate the 1/24/24 trial date. The Court orders HP to file a revised Order and Judgment granting Summary Judgment consistent with this ruling in 10 days. The Court on its own motion shall set an OSC re submission of Judgment on 03/26/25 at 8:30am. If the Court has signed the Order and Judgment prior to that date, the Court shall vacate the hearing.

Factual / Procedural Context

Plaintiff AVL Test Systems, Inc. (“AVL”) is a supplier of vehicle emissions testing equipment and software (“equipment”) to industry and governmental agencies. Defendant Hensel Phelps Construction Co. (“HP”) is a building contractor engaged by the State of California to act as the Prime Contractor overseeing design and construction of a new headquarters and emissions testing facility for the State of California’s Air Resources Board (“CARB facility”) in Riverside. HP engaged AVL to supply and install its equipment and software for the CARB facility. AVL did so, and performed all covenants and conditions required of it. AVL alleges HP, with actual knowledge that it did not hold a contractor’s license, certified to the California Department of General Services (“DGS”) that AVL had duly performed in compliance with California law and was due payment on its subcontract, and DGS remitted funds to HP for payment to AVL. To date, the State of California has paid HP at least \$85,000,000 for AVL’s work. AVL alleges HP is illegally withholding at least \$6 million from it.

AVL alleges it was forced to initiate an arbitration proceeding to collect the money it is owed. During arbitration, HP asserted an affirmative defense that AVL was not acting in the capacity of a supplier of equipment, but rather was acting as a building contractor, and that like HP, it was required to hold a contractor’s license from the California State Contractors Licensing Board (“CSCLB”). AVL alleges according to HP, the subcontract arrangement between HP and AVL was illegal, in violation of the CSLL, and the payment certifications HP submitted to the State of California were false. HP moved in arbitration for summary judgment, or in the alternative bifurcation, of the licensure affirmative defense issue. The arbitration panel granted arbitration and ordered an evidentiary hearing on the license issue.

On March 15, 2023, AVL filed its complaint for declaratory relief seeking a judgment that its claims for payment are not barred by the California State Contractors Licensing Law (“CSLL”), including Business & Professions Code section 7031. On July 28, 2023, this Court granted AVL’s motion to stay the pending arbitration and denied HP’s motion to compel arbitration, without prejudice. On August 21, 2024, HP filed its answer to the complaint, asserting various affirmative defenses, including as its 27th affirmative defense AVL’s failure to maintain proper licensure pursuant to Business and Professions Code section 7031.

AVL’s Motion

AVL has now moved for summary judgment on its complaint on the ground its collection claims in arbitration were not barred by the CSLL because it “does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure” and AVL’s equipment falls within the exemption. (C.C.P., § 437c, Bus. & Prof. Code, § 7045.) AVL also argued its claims were not based on a contract or act that obligated AVL to have a license. AVL argued the licensing law is not intended to protect sophisticated contractors like HP. AVL argued the CSLL only regulates builders and exempts equipment vendors like it, and that AVL did not perform any act that required a license.

HP opposed and argued AVL’s motion failed to adequately discuss all applicable sections of the CSLL, including Bus. & Prof. Code, §§ 7029, 7045, 7059, and 7065 and related case law. HP argued that AVL failed to carry its initial burden by failing to accurately cite the contract documents and it is clear AVL’s work became a fixed part of the structure. HP also argued the motion should be denied, or continued, due to AVL relying on a previously undisclosed expert, Cindi Christenson, who AVL had not yet made available for deposition, after deciding to abandon

AVL's former expert, Matt LeVesque, who had issued reports for AVL with differing rationale than Ms. Christenson and had already been deposed, until after HP had the opportunity to depose Ms. Christenson. (C.C.P., § 437c(h).)

AVL replied by arguing HP does not raise a factual dispute over the subcontract as one for the supply and installation of movable equipment and AVL was exempt from license. It argued no act performed required licensure. Finally, the submission of the declaration of Cindi Christenson was procedurally proper and there were no grounds for a continuance.

HP's Motion

HP also moved for summary judgment on its complaint on the ground AVL's work required a contractor's license at all times. (C.C.P., § 437c, Bus. & Prof. Code, § 7031.)

AVL opposed by arguing the exemption under Business & Professions Code § 7045. AVL argued that HP ignored critical facts as it is an equipment supplier, not a contractor and thus is not subject to CSLL.

In reply, HP argued AVL's opposition did not alter its entitlement to summary judgment. HP argued it was not required to address Business & Professions Code § 7045 as AVL had the burden of proving any exemption. HP argued AVL's attempts to avoid the CSLL are misplaced and do not create a triable issue of material fact.

Requests for Judicial Notice

AVL's unopposed request for judicial notice of CARB's website's "About" page is denied as immaterial to the court's ruling on this motion.

HP's unopposed request for judicial notice of the pleadings, certified license history of AVL from the CSLB and this court's July 28, 2023, order is granted. (Evid. Code, § 452(c), (d).)

AVL's Objections

AVL's objections to HP's evidence in support of HP's motion, as well as evidence submitted in opposition to AVL's motion, specifically portions of Declarations of Brian Downs, William J. Stempson, Rod Hammett, Michael Viayra, Jr. and Robert Lucas, are overruled. The Court finds that the declarants have laid adequate foundation, presented relevant opinions based on personal knowledge and do not constitute hearsay. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532.)

On 01/09/25, the Court heard oral argument on both motions. After taking argument from both sides, the Court took the matter under submission. This ruling now follows.

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Analysis

The ruling below is combined due to the single issue presented in both parties' motions – *i.e.* whether AVL was required to have a contractor's license. As discussed below, the Court finds that AVL was required to have a contractor's license.

Summary Judgment Standard

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (C.C.P. § 437c(c).)

A plaintiff moving for summary judgment/adjudication bears the burden to produce admissible evidence on each element of a cause of action entitling him or her to judgment. (C.C.P. § 437c(p)(1); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.) Once the plaintiff has made such a showing, the burden shifts to the defendant to produce admissible evidence showing that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (C.C.P. § 437c(p)(1); *Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 565.) If the defendant does not make such a showing, summary judgment in favor of the plaintiff is appropriate. Importantly, a plaintiff does not have an initial burden to disprove affirmative defenses and/or cross-complaints asserted by the defendant. (*Oldcastle Precast, Inc.*, *supra*, 170 Cal.App.4th at 564-65.)

A defendant moving for summary judgment bears the initial burden of proving that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (C.C.P. § 437c(p)(2); *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037.) Importantly, a moving defendant establishes a right to summary judgment by showing that the plaintiff lacks the evidence to support at least one element of the cause(s) of action pleaded. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 756. *See also Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.) Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar, supra*, 25 Cal.4th at 849.) The opposing party may not rely upon the allegations or denials in its pleadings but must “set forth the specific facts showing that a triable issue of material fact exists.” (C.C.P. § 437c(p)(2).) Claims and theories not supported by admissible evidence do not raise triable issues of fact. (*Rochlis v. Walt Disney Co.* (1993) 19 Cal.App.4th 201, 219, disapproved on another ground in *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238.)

Declaratory Relief

Declaratory relief is available to “[a]ny person interested under a written instrument ... who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property ... in cases of actual controversy relating to the legal rights and duties of the respective parties” (C.C.P., § 1060.) “Declaratory relief pursuant to this section has frequently been used as a means of settling controversies between parties to a contract regarding the nature of their contractual rights and obligations.” (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647.) Likewise, “[t]he correct interpretation of a statute is a particularly suitable subject for a judicial declaration. [Citation.] Resort to declaratory relief therefore is appropriate to attain judicial clarification of the parties’ rights and obligations under the applicable law.” (*City of Lancaster v. Netflix, Inc.* (2024) 99 Cal.App.5th 1093, 1114 [internal citations omitted].)

A defendant moving for summary judgment on a declaratory relief claim has the burden to establish that “the plaintiff is not entitled to a declaration in its favor. It may do this by establishing (1) the sought-after declaration is legally incorrect; (2) undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief.” (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402.) “It has long been the law that a court may determine disputed questions of fact in declaratory relief proceedings.” (*R. G. Hamilton Corp., Ltd. v. Corum* (1965) 218 Cal. 92, 95.)

Contractors State License Law (Bus. & Prof. Code,¹ § 7000. et seq.)

Given that the focus of both parties’ motions is whether AVL required licensure with the CSLB, a brief discussion of the CSLL is an appropriate starting point.

“The CSLL provides ‘a comprehensive scheme which governs contractors doing business in California. ‘The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. 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.’” (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 894 [internal citations omitted].)

Section 7026 explains that:

“Contractor” for the purposes of this chapter, is synonymous with “builder” and, within the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. “Contractor” includes subcontractor and specialty contractor.

Section 7031 provides:

(a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required

¹ All statutory references are to the Business & Professions Code, unless specifically stated otherwise.

by this chapter without alleging that they were a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

[...]

(e) 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.

The statutory intent behind section 7031, subdivision (a) to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay. (*Judicial Council, supra*, 239 Cal.App.4th at p. 895.) “Because it denies all compensation for a contractor’s work, regardless of the quality of the work or the reasons for the failure of licensure, section 7031 can have harsh and seemingly unfair effects.” (*Ibid.*)

“Courts have taken their cue from the Legislature in enforcing the letter of the law, consoled by the Legislature’s “determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties.” [Citation.]

Accordingly, if a contractor is unlicensed for any period of time while delivering construction services, the contractor forfeits all compensation for the work, not merely compensation for the period when the contractor was unlicensed. [Citation.]” (*Judicial Council, supra*, 239 Cal.App.4th at pp. 896-897.) Indeed, “section 7031 is held to apply “[r]egardless of the equities” [citation], unlicensed contractors are prohibited from asserting equitable defenses, such as estoppel, to forfeiture. [Citation.] On the contrary, “[c]ourts may not resort to equitable considerations in defiance of [Business and Professions Code] section 7031.” [Citation.] As a result, an unlicensed contractor is subject to forfeiture even if the other contracting party was aware of the contractor’s lack of a license, and the other party’s bad faith or unjust enrichment cannot be asserted by the contractor as a defense to forfeiture. [Citation.] For a contractor failing to qualify under the statutory safe harbor of subdivision (e), [Business and Professions Code] section 7031 is truly a strict liability statute.” (*Id.* at pp. 896-897.)

“Nothing in [Business and Professions Code] section 7031 either limits its application to a particular class of homeowners or excludes protection of ‘sophisticated’ persons. Reading that

limitation into the statute would be inconsistent with its purpose of “detering unlicensed persons from engaging in the contracting business. [Citation.] Indeed, in *Hydrotech [Systems, Ltd. v. Oasis Waterpark]* (1991) 52 Cal.3d 988], the court rejected the argument that [Business and Professions Code] section 7031 should not be applied to a lawsuit by a subcontractor against a contractor because the subcontractor ‘did not hold itself out to the public’ [Citation.] The court applied [Business and Professions Code] section 7031 even though the suit was against a general contractor for a large commercial construction project who allegedly was aware of the subcontractor’s unlicensed status. [Citation.]” (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 849-850.)

There are limited exception to the licensing requirement. One of those exceptions is found in Section 7045, which states:

This chapter does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure, nor shall it apply to a material supplier or manufacturer furnishing finished products, materials, or articles of merchandise who does not install or contract for the installation of those items.

Section 7045 was intended to apply to installations in which construction activity is merely incidental, such as the installation of kitchen appliances. (*E. A. Davis & Co. v. Richards*, (1953) 120 Cal.App.2d 237 [”*Richards*”].) Further, in the construction of a baseball school, the contractor’s work fell outside the scope of section 7045 where the contractor installed water sprinklers, built and painted signs and a scoreboard, “signs fixed in the ground in concrete,” and constructed a dugout. (*Johnson v. Mattox* (1968) 257 Cal.App.2d 714, 718).

The Court will address an issue that arose during oral argument. During argument, AVL insisted the Court must deny HP’s motion on procedural grounds because while HP argued in its moving papers that AVL needed a contractor’s license, it did not specifically argue that section 7045 did not apply to AVL. The Court disagrees. HP’s burden was to provide evidence that the CSLL applied to the work performed by AVL, which for the reasons stated below, the Court finds that it did. Once the burden shifted, AVL was then required to show that the section 7045 exemption applied, which the Court for the reasons stated below, finds that it did not. (*Northwood v Judd* (1949) 93 Cal.App.2d 276, 282 [“One claiming an exemption from a general statute has the burden of proving that he comes within the exemption. This, plaintiff failed to do.” *See also* Bus. & Prof. Code § 7031(d) [“When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.”].)

As such, the Court finds no procedural impediment to proceeding to HP’s motion for summary judgment.

The Parties’ Contract and Application of CSLL

The work performed and the contract language is undisputed. During oral argument, Plaintiff argued that there were still disputed facts, but the Court finds no material facts exist that are undisputed. That is, the contract language and what the subcontractors did is undisputed. The only dispute is whether the work performed mandated that AVL have a contractor’s license, which is a question of law, not fact. The undisputed facts show that under the Subcontract, AVL agreed to perform the Group 6 bid package work for heavy duty (“HD”) dynamometers, which, generally stated, involved work to design, engineer, fabricate, and provide the installation of 4-wheel drive

chassis dynamometers (HD-016) and road speed simulation fans (HD-024), including installation of underground, equipment, mechanical and plumbing systems, electrical systems, and control systems.

AVL contends that it is not a “contractor” or “builder” under section 7026. AVL states it is a manufacturer of moveable equipment and only engaged in non-construction activities that do not require licensure, such as preparation of requests for information and other submittals, none of which require that it have a contractor’s license under section 7031.

The Court finds that AVL’s position is not supported by the statutory language or the parties’ contract documents. Under section 7026, “a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself *or by or through others*, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, or other structure.” (Bus. & Prof. Code, § 7026 [emphasis added].) “Section 7026 plainly states that both the person who provides construction services himself and one who does so ‘through others’ qualifies as a ‘contractor.’ The California courts have also long held that those who enter into construction contracts must be licensed, even when they themselves do not do the actual work under the contract. [Citations.]” (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 941.) Moreover, “[t]he mere execution of such a contract is an act ‘in the capacity of a contractor,’” and makes an unlicensed person subject to the provisions of Business and Professions Code section 7031, discussed below. (*Id.* at 940.)

In this matter, the Court finds that the contract documents establish AVL was a contractor under section 7026. During oral argument, Plaintiff presented the Court with a document to demonstrate it was not a contractor: the “Southern California Consolidation Project 01 21 00 – Allowances – Conformed.” (*See* Ex. 7 to Plaintiff’s Compendium, pgs. 0033-0038 of 1831.) Plaintiff argued that this document showed that AVL was not responsible for any installation or construction of the equipment. However, the contracts at issue were simply not limited to one document. Here, the bid and multiple change orders, as well as the project specifications, include a broad range of construction work specifically related to the installation of AVL’s equipment, by AVL itself and subcontractors establish that AVL was required to be licensed under the CSLD.

Put simply, this work included more than the manufacture or supply of equipment, it included substantial design and construction work, including millions of dollars for, among other things, installing underground, equipment, mechanical and plumbing systems, electrical systems, and control systems. (HP SSUMF Nos. 9-10, 14-17, 40-42.) The Subcontract also incorporated performance Specifications applicable to a broad range of construction work (Division Nos. 21-33), which were separate and distinct from the equipment performance Specifications that also were incorporated into the Subcontract. (HP SSUMF Nos. 11-12.) Through the Yellow/Blue Drawings, AVL also confirmed the inclusion of mechanical, electrical, and plumbing work within its base scope. (HP SSUMF Nos. 20-22.) These facts are not meaningfully disputed by AVL.

Section 7045

Nevertheless, AVL argues a license was not required because the contract at issue was exempt under section 7045 by contending that the emissions equipment it sold did “not become a fixed part of the structure.” AVL contends this case is analogous to *Walker v. Thornsberry* (1979) 97 Cal.App.3d 842.) In *Walker*, the plaintiff was a manufacturer of metal prefabricated restrooms that did not hold a contractor’s license. The plaintiff contracted to furnish, assemble, and install

one of its units upon a concrete foundation the defendant prepared. When the defendant did not pay, the plaintiff sued, and the defendant asserted plaintiff's claim was barred under section 7031. The trial court ruled a contractor's license was not required based on section 7045, and the appellate court agreed. (*Walker, supra*, 97 Cal.App.3d at pp. 843-844.) The *Walker* court explained, implicit in the trial court's decision was a determination the prefabricated unit did not become a fixed part of the structure, and whether the goods installed become a fixed part of the structure is a question of fact. (*Walker, supra*, 97 Cal.App.3d at p. 847.) The *Walker* court determined the record supported the application of section 7045's exemption because "[t]he contract between [plaintiff] and defendant did not require [plaintiff] to undertake the installation of concrete foundation, rough plumbing, or installation of plumbing fixtures, stalls, wood roofing, and painting upon which to place the prefabricated restroom. [Plaintiff's] employees merely assembled the pieces and bolted the structure to the foundation. Their contribution of labor to the finished restroom was at most minor and incidental." (*Id.* at p. 848.)

Walker was distinguished and found inapplicable by the court in *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1046 (*Banis*): "Here, in contrast, plaintiff's services involved more than incidental labor. The contract called for plaintiff to provide drawings for electrical, plumbing, and ceiling plans. Plaintiff was also to coordinate work with architects as well as structural, mechanical, and electrical engineers. The work plaintiff was hired to do cannot be compared with that in *Walker*."

The Court finds this case to be much more analogous to *Banis* than *Walker*. The contract in this case did not simply require AVL to show up with a prefabricated unit, perform some assembly, bolt the equipment in place, and be finished. Indeed, unlike in *Walker*, the evidence shows the parties' contract called for emissions equipment to become a "fixed part of the structure" given the substantial size and weight of AVL's equipment and materials, by way of substantial permanent connections – such as embeds, anchor plates, welding, penetrations through walls and floors, conduit encased in concrete, and other works – that formed a significant part of AVL's scope of work. There is no dispute about the facts regarding the terms of the contract and the work performed – this contract required a substantial amount of work that shows section 7045 did not exempt AVL from the requirement of having a contractor's license.

During oral argument and in its papers, Plaintiff also pointed to the facts of *Richards, supra*. In that case, the appellate court affirmed the trial court's determination that section 7045 exempted an installer of kitchen cabinets. The key difference between *Richards* and this case, however, is that in *Richards*, the trial court specifically found that the cabinets, plumbing and electrical work were not to be permanent structures. Unlike the permanent fixtures in this case, in *Richards*, the trial Court found that, "the cabinets 'were prefabricated and a finished product'; and that it 'was not actually fabricated into nor did it become a permanent, fixed part of the defendants' kitchen.'" (*Richards, supra*, 120 Cal.App.2d at p. 239-240 [emphasis added].) Any "minor plumbing and electrical wiring" was merely incidental to the work performed. (*Ibid.*) The Court finds little comparison with *Richards* to the case at hand. The work performed here to house AVL's equipment required substantial installation of underground mechanical and plumbing, electrical and control systems that cannot be characterized as merely incidental to the installation.

Substantial Compliance

To the extent AVL presented evidence of its belated attempt to obtain licensure, subsequent licensure and lapse of license without renewal, this is not sufficient to establish substantial

compliance with the licensing requirements under section 7031, subdivision (e). Compliance with section 7031, subdivision (e), is now the exclusive means of avoiding forfeiture based on substantial compliance. (*Judicial Council, supra*, 239 Cal.App.4th at p. 896.) As to the initial unlicensed period (May 2018 to May 2019), substantial compliance is not available “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.” (§ 7031(e)); see also *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal. 4th 412, 432.) AVL does not present evidence that it met these requirements. As such, the substantial compliance doctrine does not apply.

Conclusion

Based on the foregoing, the Court finds AVL did not meet its initial burden in its motion for summary judgment on its claim for declaratory relief and accordingly denies the motion.

The Court finds that HP has met its initial burden of showing AVL is not entitled to declaratory relief sought in its complaint because it was not licensed in compliance with the CSLL. In opposition, AVL failed to create a triable issue of material fact on the issue of its licensure or exemption therefrom under the CSLL. Accordingly, the Court grants HP’s motion for summary judgment.

GOOD CAUSE APPEARING, IT IS SO ORDERED:

Dated: January 10, 2025



CHAD W. FIRETAG
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2301309

Case Name: AVL TEST SYSTEMS, INC vs HENSEL PHELPS CONSTRUCTION CO.

STEPHEN L PESSAGNO
1111 Broadway Ste 2150
Oakland, CA 94607

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing Case Number CVRI2301309 Minute Order dated: 01/13/2025 on this date by depositing said copy as stated above.

Dated: 01/13/2025

JASON B. GALKIN,
Court Executive Officer/Clerk of Court

by: 

K. Rahlwes, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
Court on its Own Motion

01/14/2025
9:58 AM
Department 3

CVRI2301309

AVL TEST SYSTEMS, INC vs HENSEL PHELPS CONSTRUCTION CO.

Honorable Chad Firetag, Judge
K. Rahlwes, Courtroom Assistant
Court Reporter: None

APPEARANCES:

No Appearances

On Court's own motion:

Through inadvertence and mistake, the Ruling on the Submitted Matter was incorrectly dated. The Court signed the Ruling on Submitted Matter on 1/13/25. In all other respects, the Ruling remains the same.

Notice to be given by Clerk to DAVID JACOB GINSBERG , STEPHEN L PESSAGNO.

Minute entry completed.