



OREGON LAW UPDATE

case in point ...

Oregon Court Rules Against Contractor, RPC: Conduct “Unconscionable”

From the Desk of Jeff Eberhard: The Circuit Court for the County of Lincoln recently issued a ruling against Oregon contractor, Restoration Professionals & Consultants (“RPC”), stating that the business’ contract with a 77 year-old homeowner was unconscionable and unenforceable.

Claims Pointer: Contracts used by repair contractors will not necessarily be enforced if the terms of the contract are oppressive or if the insured is improperly pressured to sign the contract. Insurance carriers that come across RPC should be aware of this court’s recent finding of unconscionable conduct.

You may be familiar with Albany-based repair contractor Restoration Professionals & Consultants (“RPC”). Recently, our firm was hired to protect the interests of this 77 year-old policyholder against RPC. RPC overcharged the insured in both scope and cost of repair work, performing work that was unnecessary, not authorized by the insured and not covered under the policy.

RPC argued that its contract mandated private arbitration. We disagreed, arguing that RPC’s contract is unconscionable and should be disregarded by the court. The Lincoln County Court agreed, recently issuing a scathing, nine page ruling calling RPC’s tactics “deceptive and oppressive” and their contract with the homeowner was “unconscionable” and unenforceable.

Specifically, the court made the following findings regarding RPC and its contract:

1. No Estimate: The court noted that our client, the homeowner, “was kept in the dark about the financial commitment she was making.” The court noted that “a homeowner typically wants and needs to know how much any project is likely to cost. The reference to ‘estimates’ without any intent to provide one is suggestive of surprise and deception.”

2. No Progress Billing: The contract stated: “Contractor will invoice Owner

weekly or, in Contractor’s sole discretion, less frequently.” The Court went on to note, “What that means is that RPC had no obligation to tell [the homeowner] anything about the cost of the project until the work was done.” The court found “That self-serving circumstance, coupled with the absence of a contractual obligation to provide an estimate, is manifestly unfair and oppressive . . .”

3. Scope of Work: The contract declared that RPC shall determine “[T]he exact nature of the specific tasks to be performed . . .” The Court found that “RPC’s contract required [the homeowner] to sign a blank check for work to be performed. Without an estimate or periodic billings to-date, the contract operated to require [the homeowner] to sign a blank check . . .”

4. Insurance Proceeds: The Court went on to state, “RPC represented that the insurer would pay for the work and that [the homeowner] would not have to worry about it. Without such a representation, [the homeowner] would not have authorized the work to be performed because she knew that she could not have afforded it.” Additionally, “Part of RPC’s deception was knowing full well that [the homeowner] could not afford the project, but still forging ahead.” “RPC rolled the dice that the insurer would pay the invoice, or most of it, all with the intent



Contact: Jeff Eberhard | www.smithfreed.com | email: jeberhard@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.



SMITH FREED & EBERHARD P.C.
Your Litigation Partner

OREGON LAW UPDATE

case in point ...

Oregon Court Rules Against Contractor, RPC: Conduct “Unconscionable”

to turn to the insured for the immediate payment of any remaining balance owing. The deception included tricking her into thinking that RPC would be content to take a promissory note for anything that was not covered by insurance.”

5. RPC’s Motive: Finally, the Court addressed RPC’s motive, noting, “A full three years after the impact of the recession/depression hit, RPC came to her front door, hungry for work. The contract terms, and the other deception which accompanied it, showed just how hungry RPC was.”

Although the facts and circumstances of this case may be unique, we see no reason why the Court’s rationale would not apply to other matters involving RPC. It is important to note that the Court found the dispute between our client and RPC was within the scope of the contract, and that the arbitration provision applied to this dispute, but the contract itself is unenforceable.



Contact:Jeff Eberhard | www.smithfreed.com | email: jeberhard@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.



SMITH FREED & EBERHARD P.C.
Your Litigation Partner