

Non-Compliance With Home Improvement Contracts Act Not a Defense to a Meritorious Claim, Indiana Court Holds

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The Indiana Home Improvement Contracts Act, IND. CODE §§ 24-5-11-1, *et seq.* (“HICA”), requires a home improvement contractor to provide a written contract to a homeowner before performing any work for an amount greater than \$150.00. A contractor violating the HICA commits a “deceptive act” as defined in the Indiana Deceptive Consumer Sales Act (“DCSA”), which is actionable by the Attorney General or the consumer. The Indiana Court of Appeals recently addressed the question of whether a consumer who does not file a counterclaim under the DCSA may defend a contractor’s claim for payment by asserting a HICA violation as a defense. In *Imperial Insurance Restoration & Remodeling, Inc. v. Costello*, 965 N.E.2d 723 (Ind. Ct. App. 2012), the Court determined that a contract in violation of HICA was not automatically void.

James Costello hired Imperial, a repair and restoration contractor, to repair water damage caused by a burst pipe. Costello signed a “Work Authorization” contract authorizing Imperial to make repairs to the home, but the contract violated HICA because it did not describe the proposed improvements, date of completion, contingencies that might affect Imperial’s work, or the price. When the work was completed, Costello signed a “Certificate of Satisfaction” confirming his satisfaction with the work and authorizing his insurance carrier to make payment directly to Imperial. The insurance company sent the check to Costello, who cashed the check but did not pay Imperial. After Imperial sued, the trial court ruled in favor of Costello.

Imperial acknowledged that its contract was not compliant with HICA. Costello asserted non-compliance as a defense, but did not file a counterclaim or file a separate lawsuit seeking relief under the DCSA. One remedy under the DCSA is to declare a contract “void” or “unenforceable,” but the Court here concluded that not every contract that violates the HICA must automatically be void. Otherwise, “Imperial would suffer both a serious and undeserved forfeiture outweighing the other factors.” The Court of Appeals reversed the trial court, and directed the entry of judgment in favor of Imperial after the trial court conducts a hearing to determine the amount of interest due on the contract and whether attorney’s fees should be awarded.

Although this decision resulted from compelling facts weighing in favor of the contractor, it is the first time an Indiana court has ruled on the issue of whether the HICA may be asserted as a defense to defeat an otherwise meritorious claim. This case will be of interest to home improvement contractors, who can avoid litigation by complying with HICA, and to consumers, who must assert remedies under the DCSA when faced with HICA violations.

For more information about this topic and the issues in this article, please contact Timothy J. Abeska, who is vice chair of the Firm's Construction Law Practice Group, in our South Bend office at (574) 237-1119 or tim.abeska@btlaw.com.

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