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Supreme Court, Appellate Division, Second Department, New York.
 Burton FLAX, appellant,
 v.
 David HOMMEL, et al., respondents.
 May 15, 2007.

Background: Homeowner sued home improvement contractor for breach of contract, and contractor filed breach of contract counterclaim. The Supreme Court, Nassau County, [Spinola, J.](#), denied homeowner's motion to dismiss counterclaim, and homeowner appealed.

Holding: The Supreme Court, Appellate Division, held that alleged contract between homeowner and home improvement contractor, who was not individually licensed at the time contract was entered and work was performed, was unenforceable.

Reversed.

West Headnotes

[1] Licenses 238 ↪39.43(1)

238 Licenses

238I For Occupations and Privileges

238k38.5 Rights and Remedies of Unlicensed or Unauthorized Persons and of Persons Dealing with Them in General

238k39.43 Contractors

238k39.43(1) k. In General. **Most**

Cited Cases

Alleged contract between homeowner and home improvement contractor, who was not individually licensed at the time contract was entered and work was performed, was unenforceable, even if non-party corporation owned by contractor was licensed.

[2] Licenses 238 ↪39.43(2)

238 Licenses

238I For Occupations and Privileges

238k38.5 Rights and Remedies of Unlicensed or Unauthorized Persons and of Persons Dealing with Them in General

238k39.43 Contractors

238k39.43(2) k. Actions. **Most Cited**

Cases

As the counterclaimant in his individual capacity, home improvement contractor was required to plead that he was possessed of a duly issued license to maintain his counterclaim to recover damages for breach of contract against homeowner. [McKinney's CPLR 3015\(e\)](#).

****735** The DeLorio Law Firm, LLP, Rye Brook, N.Y. (Robert G. Rafferty of counsel), for appellant. Dewey Pegno & Kramarsky, LLP, New York, N.Y. ([David S. Pegno](#) of counsel), for respondents.

[HOWARD MILLER, J.P.](#), [DANIEL D. ANGIOLILLO, EDWARD D. CARNI, and THOMAS A. DICKERSON, JJ.](#)

***809** In an action to recover damages for breach of contract, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County ([Spinola, J.](#)), dated August 30, 2006, as, in effect, denied that branch of his cross ***810** motion pursuant to [CPLR 3211 \(a\)\(7\)](#) and [CPLR 3015\(e\)](#) which was to dismiss the first counterclaim of the defendant David Hommel to recover damages for breach of contract.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of plaintiff's cross motion which was to dismiss the first counterclaim of the defendant David Hommel is granted.

The plaintiff is a homeowner who hired the defendant David Hommel (hereinafter Hommel), a home improvement contractor, to perform work for him. A dispute over the work subsequently arose and the

plaintiff commenced this action against Hommel and his wife to recover damages for breach of contract. They answered the complaint and Hommel interposed a counterclaim in his individual capacity to recover damages for breach of contract for work performed **736 on behalf of and subsequent to the issuance of a home improvement contractor's license to Selective Contracting Services, Inc. (hereinafter SCSI), a domestic corporation principally owned and controlled by Hommel. The plaintiff cross-moved, inter alia, to dismiss Hommel's first counterclaim on the ground that Hommel was not individually licensed to operate a home improvement business during the relevant period as required in Nassau County (see Local Law No. 6 [1970] of the County of Nassau). Hommel concedes that he was not individually licensed at the time of the contract or performance of the work at issue. However, it does appear that the nonparty corporation, SCSI, was so licensed.

[1][2] A home improvement contractor who is unlicensed at the time of the performance of the work for which he or she seeks compensation forfeits the right to recover damages based on either breach of contract or quantum meruit (see *B & F Bldg. Corp. v. Liebig*, 76 N.Y.2d 689, 563 N.Y.S.2d 40, 564 N.E.2d 650; *Ben Krupinski Bldr. & Assoc., Inc. v. Baum*, 36 A.D.3d 843, 828 N.Y.S.2d 583; *Callos, Inc. v. Julianelli*, 300 A.D.2d 612, 752 N.Y.S.2d 398; *Todisco v. Econopouly*, 155 A.D.2d 441, 547 N.Y.S.2d 103; *Piersa, Inc. v. Rosenthal*, 72 A.D.2d 593, 421 N.Y.S.2d 91). Since Hommel was not individually licensed pursuant to Nassau County Administrative Code § 21-11.2 at the time the contract was entered and the work was performed, the alleged contract between Hommel and the plaintiff was unenforceable (see *Brite-N-Up, Inc. v. Reno*, 7 A.D.3d 656, 776 N.Y.S.2d 839; *B & F Bldg. Corp. v. Liebig, supra*). The Supreme Court erred in denying that branch of the plaintiff's cross motion which was to dismiss the first counterclaim pursuant to CPLR 3211(a)(7) and CPLR 3015(e). Since Hommel did not satisfy the licensing requirements, he is not entitled to the relief reques-

ted in his counterclaim (see *811*Botsaris v. JK Bono Gen. Contrs. Corp.*, 266 A.D.2d 329, 698 N.Y.S.2d 327). Moreover, the fact that SCSI, a nonparty, possessed a corporate license does not change this result (see *George Piersa, Inc. v. Rosenthal, supra*). As the counterclaimant in his individual capacity, Hommel was required to plead that he was possessed of a duly issued license in order to maintain his counterclaim to recover damages for breach of contract (CPLR 3015[e]). Given the strict application of the licensing laws, it cannot be said that Hommel satisfied the licensing requirement in this case, and therefore he is not entitled to any relief against the plaintiff (see *AEC Bldg. Assoc. v. Crystal*, 246 A.D.2d 496, 667 N.Y.S.2d 399; *Ellis v. Gold*, 204 A.D.2d 261, 611 N.Y.S.2d 587; *Piersa, Inc. v. Rosenthal, supra*).

N.Y.A.D. 2 Dept.,2007.

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40 A.D.3d 809, 835 N.Y.S.2d 735, 2007 N.Y. Slip Op. 04258

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