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Legal Corner by Jay A. Goldstein

Illegal contracts for land improvement are unenforceable.

A recent Court of Appeals decision has held that a party who contracts to improve land without a permit cannot recover unpaid amounts under the contract. Evans v. Luster, 84 Wn.App. 447 (1996). Evans orally contracted with a vendor, ACI, to provide equipment, materials and labor to clear, grade and install drainage on Evans' Snohomish County property. The parties knew the work required a permit, but they agreed to accomplish the work without a permit.

The parties planned and performed most of the work while the county planning department was closed for a week. However, the county discovered the work and posted a stop-work order.

Several months later ACI, without approval or consent, finished the work and filed a lien on the property. ACI then sued Evans on the contract and to enforce the lien. Evans did not pay for any of the work performed under the contract.

The trial court found that the lien was untimely. However, the trial court also found that ACI could recover for work performed prior to the stop-work order.

The Court of Appeals reversed, holding that no payment was due under the illegal contract.

Under the doctrine of "in pari delicto," where the parties are equally culpable, a court will leave parties to an illegal contract as it finds them. Since the contract violated a municipal ordinance, it was void. An exception to this rule exists where the agreement is not criminal or

immoral and the violated statute or ordinance contains an adequate remedy for its violation.

However, the Snohomish County Code provides that violations constitute a public nuisance, and violators are subject to misdemeanor and other administrative penalties. Thus, the court found that the exception did not apply.

Additionally, the court may choose to enforce an illegal contract under public policy considerations when: 1) enforcement will discourage such transactions in the future; 2) serious moral turpitude is involved; and 3) the landowner would be unjustly enriched. The Appellate Court held that the best way to protect the public interest and discourage such illegal behavior is to not enforce the contract, despite the unjust enrichment of the landowner.