

Important New Court Decision for Owners and Contractors

The Massachusetts Home Improvement Contractor Act (the “HIC Act”) requires home improvement contractors to register with the Commonwealth. One section of the HIC Act enables a homeowner who contracts with a registered contractor to resolve any disputes through the state-run Home Improvement Contractor Arbitration Program. If a homeowner contracts with a contractor that has not registered as required by the HIC Act, the arbitration program is not available to the homeowner and the dispute must be resolved in court.

In a case of first impression, a Superior Court judge recently ruled that a homeowner who hired an unregistered contractor and later had to bring suit to resolve a dispute with the contractor was entitled to recover damages and legal fees under the Consumer Protection Act, (Chapter 93A), from the contractor because the homeowner was unable to resolve the dispute in the arbitration program. (*Groleau v. Russo-Gabriele*, Norfolk Superior Court, CA No. 2012-1818, 11/26/14.) Significantly, the Court found that the homeowner’s loss of the right to arbitrate because of the contractor’s failure to register was, by definition, injurious to the homeowner and entitled her to recover under Chapter 93A. In addition, the Court found that a waiver of the HIC Act arbitration program signed by the homeowner at the contractor’s request was of no effect. Finally, the Court found that a homeowner cannot consent to a contractor performing work without being registered as required by the HIC Act.

This decision reflects two principles which are important to building owners and contractors. First, courts are reluctant to uphold purported private waivers of statutory rights. And second, in the case of individuals (rather than businesses), courts are inclined to look for ways to provide relief where an individual has clearly been wronged by a contractor. The first principle has wide applicability in commercial construction contracts, portions of which are subject to statutory requirements, for example, the Prompt Pay Act and the Retainage Act.

If you have any questions regarding the above information, please contact your attorney or an attorney in our [Construction Law Group](#).

If you have any questions about the issues addressed here, or any other matters involving Construction Law issues, please feel free to contact:

Sara P. Bryant
617.457.4048
sbryant@murthalaw.com

Loring A. Cook, III
617.457.4014
lcook@murthalaw.com

Michael J. Donnelly
860.240.6058
mdonnelly@murthalaw.com

David P. Friedman
203.653.5438
dfriedman@murthalaw.com

Maury E. Lederman
617.457.4133
mlederman@murthalaw.com

Richard J. Saletta
617.457.4016
rsaletta@murthalaw.com

Monica P. Snyder
617.457.4157
msnyder@murthalaw.com

Andrew G. Wailgum
617.457.4006
awailgum@murthalaw.com

Kevin F. Yetman
617.457.4114
kyetman@murthalaw.com