

We Represent California

October 2010

A SIGNIFICANT VICTORY FOR BAKER & ASSOCIATES

**Client awarded Statutory interest and attorneys fees against
homeowners who improperly withheld progress payment**

Our client, a contractor, sued for breach of oral contract, quantum meruit, and related causes of action; homeowners cross-complained for breach of contract, negligence, fraud, and violation of Business and Professions Code §17200 and for a declaration that the oral construction contract was void. The jury returned a special verdict finding the parties had a valid contract, contractor had substantially complied with its terms, homeowners had breached the contract, and contractor's damages for breach of contract were \$202,181.58. The trial court entered judgment for our client for \$202,181.58 plus prejudgment interest of \$36,232.01 and costs of \$38,953.19. Contractor's motion for a monthly 2% charge on the amount wrongfully withheld was granted (\$54,736.36). The trial court awarded \$200,000 in attorneys fees. Homeowners argued that the home improvement contract was void because it was not in writing (Business and Professions Code §7159). HELD: the primary purpose of §7159 is to protect consumers from abuse by contractors. Homeowners would be unjustly enriched if contractor did not recover. The jury found that contractor had rendered services worth \$820,000, and computed damages for breach of contract in excess of \$202,000. The jury found that the homeowners withheld an amount exceeding 150% of the disputed amount from progress payments to the contractor. The finding established a violation of Civil Code §3260.1. The statute is ambiguous but the legislative history, which our firm requested the Appeals Court review, demonstrates a legislative intent that both the 2% charge and attorneys fees should be available under §3260.1 in cases involving a homeowner's late progress payments to a contractor.

Judgment **AFFIRMED** September 1, 2010.

Baker & Associates, Mark E. Baker for Plaintiff, Cross-Defendant and Respondent Hinerfeld-Ward, Inc.

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