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Residential

By John Viggiani



Know Your Licenses

A general contractor took a job to build a couple's dream home in an exclusive neighborhood in north Florida. In an outdoor area at the rear of the home, he was asked to install a gas grill as part of a kitchen/lanai and screened-in pool/hot tub. The general contractor used subcontractors for most of the work on the project.

In similar homes, subcontractors installed the gas line and the hook-up of the gas grills to a

licensed gas company. In this dream home, the homeowners wanted to use a second gas company to install the underground tank and connect the gas grill.

The general contractor removed the grill from its box and placed it in the cabinet space to ready it for connection. At the time, this seemed like an innocuous task.

However, when a gas explosion occurred several years later, it became clear the task was anything but innocuous.

The homeowners filed a lawsuit against the gas grill manufacturer, the two gas companies and the general contractor. The claims against the

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manufacturer were based upon product liability, while the claims against the general contractor and the two gas companies were based upon negligence.

With some simple research, we found anyone other than a homeowner who takes the gas grill out of the box and "installs" it in a cavity or cabinet is required to have an Installer Class C liquefied petroleum (LP) gas license. This came as a surprise to the general contractor.

Under Florida Statute 527.01, a C LP Gas Installer has been defined to mean "any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering or modifying of apparatus, piping, tubing, tanks and equipment for the use of LP or natural gas in selling or offering to sell, or leasing or offering to lease, apparatus, appliances and equipment for the use of liquefied petroleum or natural gas."

Lessons Learned

We followed up with the Florida division of LP Gas and found that a general contractor who fails to have an installer C LP Gas license and removes a grill from a box and places it into the cavity of a cabinet is committing a third-degree felony.

Due to the significance of the liability in our case, we dug into this issue further. The question was whether taking the grill out of the box and placing it in the cabinet amounted to installation. There is no definition of installation in either Florida statutes or in the LP gas statutes or administrative codes.

In an opinion by then-Florida Attorney General Richard Irvin from March 1958, we found similar queries were posed. Attorney General Irvin

responded by saying, "It seems to me that any act to, or in connection with, any appliance or piece of equipment at the place where it is to be put into service is an active installation.

"This would include attaching the appliance or a piece of equipment to a building, connecting the appliance or piece of equipment to water lines or air ducts or attaching a flue. Any of these acts are potentially dangerous to the public and should be done only by those who are qualified and who have proven their financial responsibility in case of any injury or damage for which they are responsible."

Under Florida law, an individual who holds the permit, typically the general contractor, is responsible for job site safety and compliance with the applicable building codes, which would include the "installation" of the gas grill.

Based upon this information, we looked for a way to examine this issue in a similar way. We found a number of cases in Florida, mostly criminal, that dealt with people who were involved in car crashes while driving

with revoked or suspended licenses. In those cases, the Florida Supreme Court said that it was not the act of not having a license, which caused the crash or injury.

The court said that the suspension of a driver license was an existing circumstance rather than the cause of the crash. Most jurisdictions have agreed that a driver license violation is not evidence of negligence if there is no evidence of a connection between the violation and the injury.

Based on this, we were able to successfully argue that the general contractor's lack of an installer C LP Gas license did not cause the injuries and damages sustained by the homeowner in the gas explosion.

The lesson to be learned from this case is that each general contractor needs to be aware of what licenses may or may not be required – even with what appears to be an insignificant or small amount of work. ♦

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