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Huffman v. State

Home Improvement Contractors Operating without a License Are Subject to Prosecution for Each Individual Transaction

By Christopher Mason

In a case of first impression, the Court of Appeals of Maryland held that a home improvement contractor could be charged criminally for each individual transaction that the contractor enters into without a license. *Huffman v. State*, 356 Md. 622, 741 A.2d 1088 (1999). In so holding, the court determined that the intent of the legislature in drafting Section 8-601 of the Business Regulation Article of the Annotated Code of Maryland, was to charge multiple violations of that statute individually. The court concluded that the plain language of the statute supported this determination.

Between September 11, 1995, and December 18, 1996, petitioner James Ralph Huffman ("Huffman") entered into home improvement contracts with eight different homeowners. During this time period, Huffman accepted deposits and began work under each of the eight contracts. He failed, however, to complete any of the jobs and did not return any of the deposits. Moreover, Huffman was not licensed by the Maryland Home Improvement Commission to perform these home improvements as required.

As a result of Huffman's failure to complete any of the jobs or return any of the deposits, he was charged with eight separate counts of violating

§ 8-601 ("acting as [a] contractor or subcontractor or selling a home improvement without [a] license"). Huffman was convicted in the Circuit Court for Harford County on seven of the eight counts, with the State entering a *nol prosequi* on count eight.

In an unreported opinion, the Court of Special Appeals of Maryland affirmed his convictions based on the plain language of § 8-601. The Court of Appeals of Maryland granted certiorari to determine whether Huffman's actions constituted one continuing violation of § 8-601, or seven separate violations.

The court of appeals began its analysis by asserting that the legislative intent of the statute is pivotal to a determination of whether specific continuing behavior constitutes multiple violations of a single statutory offense. *Huffman v. State*, 356 Md. 622, 627-28, 741 A.2d 1088, 1091 (citing *Richmond v. State*, 326 Md. 257, 261, 604 A.2d 483, 485 (1992)). The court was determined to use a common sense approach by giving the language of the statute its ordinary meaning. *Id.* at 628, 741 A.2d at 1091.

With these principles of statutory construction laid out before it, the court examined § 8-601(a), which states in pertinent part: "[e]xcept as otherwise provided in this title, a person may not act or offer to act as

a contractor in the State unless the person has a contractor license." *Id.* The court, in construing the statute according to its plain language, concluded that a violation of § 8-601 requires two elements: 1) an individual must act as a contractor and 2) that act must be completed without a license. *Id.* The court then looked to the Maryland Home Improvement Law for the definition of "contractor." *Id.* at 629, 741 A.2d at 1092. Section 8-101(c) defines a "contractor" as "a person who performs or offers or agrees to perform a home improvement for an owner." *Id.* The court concluded that the intent of the legislature was to classify each transaction with a separate owner as an independent act of the contractor. *Id.* It relied on the use of the singular articles "a" and "an" before "home improvement" and "owner," respectively, as a basis for its conclusion. *Id.* To suggest otherwise, the court reasoned, "ignores the plain language of § 8-101 (c) and the fundamental rules of grammar." *Id.*

The court of appeals next examined the statute "in the context within which it was adopted." *Id.* at 630, 741 A.2d at 1092 (quoting *Motor Vehicle Admin. v. Mohler*, 318 Md. 219, 225, 567 A.2d 929, 934 (1990)). The title of the original statute, enacted in 1962, indicates

that the legislature fashioned the Maryland Home Improvement Law with the intention of, “providing generally for the regulation of the home improvement business of all persons in this State, establishing a system of licensing certain contractors and salesman under a new administrative agency to be known as the Maryland Home Improvement Commission; . . . [and] providing criminal penalties regarding home improvement transactions.” *Id.* (citing 1962 Md. Laws Chap. 133). Based on this language the court of appeals opined that the purpose of the Maryland Home Improvement Law was to provide criminal penalties for each home improvement transaction entered into without a license. *Id.*

Huffman relied on *Reddick v. State*, 219 Md. 95, 148 A.2d 384 (1959), and *People v. Hays*, 234 Cal. App.3d Supp. 22, 286 Cal. Rptr. 462 (1991), to support the claim that his conduct constituted only one violation of § 8-601. *Id.* at 630-31, 741 A.2d at 1092. In *Reddick*, it was determined that the State did not need to plead or prove that the defendant intended to defraud a particular person in order to satisfy the intent to defraud element of forgery. *Id.* at 631, 741 A.2d at 1092-93. Instead, a simple showing of an intent to defraud the general public satisfied the applicable pleading requirements. *Id.* at 631, 741 A.2d at 1093. In *Hays*, the court held that the determination of whether a victim is necessary for one to commit the crime of acting as a contractor is a question of fact to be determined on a case by case basis. *Id.* (citing *Hays*, 234 Cal.App.3d

Supp. 22, 286 Cal. Rptr. 462, 464 (1991)).

Based on these cases, Huffman argued that he could be prosecuted for only one violation under § 8-601 for making an offer to the general public; and therefore, a singular victim cannot be used as the unit of prosecution. *Id.* at 631-32, 741 A.2d at 1093. The court of appeals determined Huffman’s argument was inapplicable because it did not address the issue in the present case. *Id.* at 632, 741 A.2d at 1093. Moreover, the court concluded that since the case at bar was not concerned with offers to the general public, the cases relied on by Huffman were irrelevant. *Id.*

Huffman also relied on *State v. Carlisle*, 28 S.D. 169, 132 N.W. 686 (1911), and *Wilson v. Commonwealth*, 119 Ky. 769, 82 S.W. 427 (1904), in which it was held that certain criminal statutes created continuing offenses. *Id.* The court of appeals rejected this argument because the statutes at issue in *Carlisle* and *Wilson* addressed completely unrelated subject matter and were not similarly worded. *Id.* at 633, 741 A.2d at 1093-94. Moreover, the court reasoned that the decisions in *Carlisle* and *Wilson* did not take into account the Maryland legislature’s intent in enacting the Maryland Home Improvement Law, and, therefore, were unpersuasive to the instant case. *Id.* at 633, 741 A.2d at 1093.

Through its holding, the court of appeals was true to the legislature’s intent when it enacted § 8-601 and the Maryland Home Improvement

Law in 1962. The court concluded that the Maryland legislature, through the specific language selected by it for each statute, clearly intended home improvement contractors to be charged criminally for each separate transaction they enter into without a license.

The holding in *Huffman v. State* will affect both prosecutors and private attorneys. Prosecutors will now be able to charge multiple violations for each separate transaction a contractor enters into without a license. This will, in turn, give them more leverage in obtaining a guilty plea. Similarly, attorneys who represent companies or individuals who perform home improvements must, now more than ever, remind their clients to keep their licenses current.

Additionally, this holding strikes a blow for future home improvement customers in Maryland. As the phenomenon of Home Depot, Lowe’s, and the entire home improvement industry continues to grow, the precedent set by this court should reduce the number of inexperienced, unlicensed contractors performing home improvements. Consequently, this should abate the number of lawsuits brought by disgruntled homeowners hoping to save a few dollars by hiring a friend of a friend of a friend.