

THE SUPREME COURT OF ARKANSAS HOLDS SECTION 17-25-103 OF THE CONTRACTOR’S LICENSING ACT DOES NOT VIOLATE THE RIGHT OF REDRESS IN THE ARKANSAS CONSTITUTION AND SECTION 17-25-313 DOES NOT CREATE A PRIVATE CAUSE OF ACTION IN NEGLIGENCE.

In *Central Oklahoma Pipeline, Inc. v. Hawk Field Services, LLC*,<sup>1</sup> the Supreme Court of Arkansas upheld the circuit court’s ruling that section 17-25-103(d) of the Contractor’s Licensing Act barred Appellant’s claims for breach of contract and violation of the ADTPA. The Court also held that section 17-25-103(d) was constitutional, and that section 17-25-313 creates no private cause of action in negligence.<sup>2</sup>

On March 18, 2009, Central Oklahoma Pipeline, Inc., (the “Appellant”) filed a complaint against Hawk Field Services, LLC; Petrohawk Operating, Inc.; Petrohawk Operating Company; Petrohawk Operating Company, LLC (collectively “Hawk”); and Crafton, Tull, Sparks & Associates, Inc. (“CTS”), for claims of breach of contract, violation of the Arkansas Deceptive Trade Practices Act (“ADTPA”), and for establishment of liens.<sup>3</sup> Appellant asserted that Hawk solicited and accepted their bids for the construction of a natural gas pipeline on easements held by Petrohawk Operating Company. <sup>4</sup>Appellant claims it provided substantial labor and material for the completion of the pipeline, and also hired subcontractors that provided substantial labor and material to complete the project.<sup>5</sup>

Appellant asserted that Hawk terminated the contract to construct the pipeline without cause, ordered all operations to cease, and refused to pay amounts owed for labor and materials.<sup>6</sup> Hawk’s reason was that Appellant was not licensed as a contractor as required by section 17-25-103.<sup>7</sup> “Appellant also asserted that Hawk violated the ADTPA by treating [it] in a deceptive and unconscionable manner” in assuring Appellant that it would pay so that Appellant would continue to work on the project, while having no real intention to pay after completion of the work.<sup>8</sup>

Appellant alleged that CTS prepared contract drawings and was engineer for the pipeline projects, and therefore was negligent in failing to inform Appellant of the necessity of obtaining a contractor’s license under

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1. 2012 Ark. 157, 400 S.W.3d 701.

2. *Id.*, at 19, 400 S.W.3d at 712.

3. *Id.* at 2, 400 S.W.3d at 704.

4. *Id.* at 3, 400 S.W.3d at 704.

5. *Id.* at 2–3, 400 S.W.3d at 704.

6. *Id.* 400 S.W.3d at 704.

7. *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, at 3, 400 S.W.3d 701, 704.

8. *Id.* at 3, 400 S.W.3d at 704.

section 17-25-313.<sup>9</sup> Hawk answered the complaint, alleging that Appellant’s claims were barred by section 17-25-103(d) because it failed to obtain a contractor’s license. Hawk filed a joint motion for summary judgment asserting the same, and included an affidavit of Lee Hallmark, the Director of Operations of Hawk Field Services, LLC, averring that the land where the pipeline was built was not owned by them, except for a small section.<sup>10</sup> Additionally, Hallmark stated that other companies lease the pipeline to transport natural gas.<sup>11</sup> Appellant responded, arguing that in order for its claims to be barred, the work must be done “on public or private property for lease, rent, resale, public access, or similar purpose” and Hawk did not “prove that the easements in question were leased.”<sup>12</sup> Appellant later amended its original complaint to add its claim that section 17-25-103(d) violates article 2, section 13 of the Arkansas Constitution.<sup>13</sup> Appellant again amended the complaint to add Hallmark and John Does 1, 2, and 3 as defendants, asserting that as engineers, they had the duty to inform Appellant that a contractor’s license was statutorily required, and additionally added a claim of respondeat superior stating that their negligence was imputed to Hawk.<sup>14</sup>

The circuit court entered an order on July 23, 2010, granting the motion for summary judgment and finding that Appellant’s claims were barred by 17-25-103(d), and that “Hawk had no duty to inform [A]ppellant that a license was required,” because “[section 17-25-313] was silent as to any obligation of a firm... to... advise bidders.”<sup>15</sup>

Hawk filed subsequent motions for summary judgment on the second amended complaint, arguing that section 17-25-103(d) is constitutional, “section 17-25-313 does not give rise to a private cause of action,” and that Appellant’s claims were barred because the July 23<sup>rd</sup> order had been decided against Appellant.<sup>16</sup> On June 23, 2011, the circuit court granted Hawk’s motions for summary judgment and found that using the rational basis standard, 17-25-103(d) was constitutional “because [it] advanced the legitimate governmental interest of promoting public safety by requiring contractors who engage in certain types of construction to meet [certain] standards.”<sup>17</sup> “The circuit court also found that section 25-13-313 did not [create] a private

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9. *Id.* at 4, 400 S.W.3d at 705.

10. *Id.* at 4–5, 400 S.W.3d at 705.

11. *Id.* at 5, 400 S.W.3d at 705.

12. *Id.* at 5, 400 S.W.3d at 705.

13. *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, at 5, 400 S.W.3d 701, 705.

14. *Id.* at 5–6, 400 S.W.3d at 705–706.

15. *Id.* at 6, 400 S.W.3d at 706.

16. *Id.* at 5–6, 400 S.W.3d at 705–706.

17. *Id.* at 6, 400 S.W.3d at 706–707.

cause of action” and “res judicata barred the new claims raised in the second amended complaint.”<sup>18</sup>

On appeal, Appellant argued that section 17-25-103(d) did not bar its claims for breach of contract and violation of the ADTPA because “the question of whether someone falls within the definition of a contractor depends on whether the ‘property’ on which the project was built was ‘for lease, rent, resale, public access or similar purpose’” and Hawk offered no evidence that the land the pipeline was constructed on met this requirement.<sup>19</sup> Relying on *Meadow Lake Farms, Inc. v. Cooper*,<sup>20</sup> Appellant argued that in order “to be a contractor, the property on which the utility, improvement, or structure is placed must be leased.”<sup>21</sup> The Court disagreed, and affirmed summary judgment on the issue, stating that “[*Cooper*] did not suggest that the building of a structure... to be leased [would be] excluded from the definition of a ‘contractor’ [under 17-25-101(a)(1)]”.<sup>22</sup>

Appellant also argued that “section 17-25-103(d) violate[d] article 2, section 13 of the Arkansas Constitution, which [states] that ‘[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property, or character; he ought to have justice freely, and without purchase; completely, and without denial; promptly, and without delay; conformably to the laws.’”<sup>23</sup> Appellant “argue[d] that the statute [was] an unreasonable way of achieving its intended purposes” and “deprive[d] contractors of their right to sue... for unpaid work.”<sup>24</sup> The Court applied a rational-basis test to affirm the circuit court’s ruling and held that section 17-26-103(d) does not violate the Arkansas Constitution because “it advances the goal of providing an incentive for contractors to [obtain a license],” thereby ensuring that certain standards are met and protecting the public.<sup>25</sup> The Court cited its rejection of a similar claim in *Williams v. Joyner-Cranford-Burke Constr. Co.*,<sup>26</sup> where the Court found that the statute’s intended effect was to deny unlicensed contractors the right to sue.<sup>27</sup>

For its claim that section 17-25-313 creates a private cause of action in negligence, Appellant argued that the statute imposes a duty on engineers to advise prospective bidders on the requirement of a contractor’s license.<sup>28</sup>

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18. *Id.* at 8, 400 S.W.3d at 707.

19. Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC, 2012 Ark. 157, at 10, 400 S.W.3d 701, 709.

20. 360 Ark.164, 200 S.W.3d 399 (2004).

21. Cent. Oklahoma, 2012 Ark. 157, at 13, 400 S.W.3d at 709.

22. *Id.* at 13, 400 S.W.3d at 709.

23. *Id.*, at 14, 400 S.W.3d at 710.

24. *Id.* at 14, 400 S.W.3d at 710.

25. *Id.* at 16, 400 S.W.3d at 711.

26. 285 Ark. 134, 685 S.W.2d 503 (1985).

27. Cent. Okla., 2012 Ark. 157, at 16, 400 S.W.3d at 711.

28. *Id.* at 16, 400 S.W.3d at 711.

The Court affirmed the circuit court’s ruling, holding that 17-25-313 did not create a private cause of action in negligence.<sup>29</sup> The Court cited *Shannon v. Wilson*,<sup>30</sup> where it held that a licensed vendor’s violation of ACA 3030292, which prohibits the sale of alcohol to minors, is evidence of negligence.<sup>31</sup> The Court noted that in *Shannon*, the legislature explicitly “placed an affirmative duty on licensed vendors to safeguard against selling alcohol to minors.”<sup>32</sup> Also citing *Jackson v. Cadillac Cowboy, Inc.*,<sup>33</sup> the Court noted that a cause of action for negligence was also recognized against licensed vendors who sell liquor to intoxicated people, because the legislature placed a high duty of care on licensed alcohol vendors.<sup>34</sup> The Court stated that the “legislative intent to bar contractors for seeking compensation for work performed without a license” was clearly expressed in 17-25-103, thus 17-25-313 must be read harmoniously with it.<sup>35</sup> Finding that Appellant’s above-mentioned claims were without merit, the Court declined to “discuss whether the claims [were] also barred by res judicata.”<sup>36</sup>

This case exemplifies the harsh, and perhaps unfair, results that can result from penal statutes. Here, section 17-26-103(d) was found not to be in violation of Appellant’s right to redress, because the legislative intent was to punish those who violated the requirement of obtaining a contractor’s license. It also illustrates the heavy burden an Appellant faces in challenging the presumptive constitutionality of a statute.

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29. *Id.* at 18, 400 S.W.3d at 712.

30. 329 Ark. 143, 947 S.W.2d 349 (1997).

31. Cent. Okla., 2012 Ark. 157, at 18, 400 S.W.3d at 712.

32. *Id.* at 18, 400 S.W.3d at 712.

33. 337 Ark. 24, 986 S.W.2d 410 (1999).

34. Cent. Okla., 2012 Ark. 157, at 18, 400 S.W.3d at 712.

35. *Id.* at 18–19, 400 S.W.3d at 712 (citing *Williams v. Joyner-Cranford-Burke Constr. Co.* 285 Ark. 134, 685 S.W.2d 503 (1985)).

36. *Id.*, 400 S.W.3d 712.