

CONSTRUCTION CONTRACTORS BOARD

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Interoffice Memo

To: Craig P. Smith
Administrator

From: Kathleen Dahlin
Policy Analyst

Date: April 1, 2013

Subject: Proposed Amendments House Bill 2450

Attached is a document containing proposed language to amend ORS 701.131, with the intention of returning the language to its pre-2007 version. The amendment, if adopted, would solve the problem presented by the court in *Pincelich v. Nolan*, 252 Or App 42, 285 P3rd 759 (2012). This problem is discussed in further detail in the attached memorandum.

As a matter of public policy, there is a choice whether to allow unlicensed contractors to have rights of recourse in court actions by way of counterclaims (as is the current law) or return to the original version of the law, which prevented unlicensed contractors from using the courts to obtain relief. The law was inadvertently changed when the Construction Contractors Board (CCB) moved from labeling its Dispute Resolution Service "claims" to "complaints." It was not the intent of the board, which proposed the change, to create an additional legal remedy for unlicensed contractors.

**PROPOSED AMENDMENTS TO
HOUSE BILL 2540**

1 On page 1 of the printed bill, line 2, after “701.005” insert “and 701.131”.

2 On page 8, after line 5, insert:

3 **“SECTION 5.** ORS 701.131 is amended to read:

4 “701.131. (1) Except as provided in subsection (2) of this section, a con-
5 tractor may not perfect a construction lien, file a complaint with the Con-
6 struction Contractors Board or commence an arbitration or a [*court action*]
7 **claim in a court of this state** for compensation for the performance of any
8 work or for the breach of any contract for work that is subject to this
9 chapter, unless the contractor had a valid license issued by the board and
10 properly endorsed for the work performed:

11 “(a) At the time the contractor bid or entered into the contract for per-
12 formance of the work; and

13 “(b) Continuously while performing the work for which compensation is
14 sought.

15 “(2) The board, arbitrator or court may not apply the provisions of sub-
16 section (1) of this section to a contractor if the board, arbitrator or court
17 determines that:

18 “(a) The contractor either did not have a valid license with a proper
19 endorsement at any time required under subsection (1) of this section, or had
20 an initial issuance of a valid license, and:

21 “(A) The contractor was not aware of the requirement that the contractor
22 be licensed or properly endorsed for the work performed, and the contractor

1 submitted a completed application for a license within a number of days es-
2 tablished by the board, but not more than 90 days, of the date the contractor
3 became aware of the requirement;

4 “(B) At the time the contractor perfected a construction lien or com-
5 menced any [*proceeding*] **claim** subject to the provisions of subsection (1) of
6 this section, the contractor was licensed by the board and properly endorsed
7 for the work performed; and

8 “(C) Enforcement of the provisions of subsection (1) of this section would
9 result in substantial injustice to the contractor;

10 “(b) The contractor was licensed by the board for some but not all of the
11 times required under subsection (1) of this section and had a lapse in the
12 license and:

13 “(A) The contractor was not aware of the lapse in the license for more
14 than a number of days established by the board, but not to exceed 90 days,
15 before submitting a completed application for license renewal with the board;

16 “(B) Except for perfection of a construction lien and a court action to
17 foreclose the lien, at the time the contractor commenced any [*proceeding*]
18 **claim** subject to the provisions of subsection (1) of this section the
19 contractor’s license was renewed under ORS 701.063 to include the entire
20 time period for which a license was required under subsection (1) of this
21 section; and

22 “(C) For perfection of a construction lien and a court action to foreclose
23 the lien, the contractor’s license was renewed under ORS 701.063 for the
24 entire time period for which a license was required under subsection (1) of
25 this section, but not later than 90 days following perfection of the lien; or

26 “(c) The proceeding:

27 “(A) Is directed against a person or entity that:

28 “(i) Is subject to this chapter or ORS chapter 671 or 672;

29 “(ii) Provides construction or design labor or services of any kind; or

30 “(iii) Manufactures, distributes, rents or otherwise provides materials,

1 supplies, equipment, systems or products; and

2 “(B) Arises out of defects, deficiencies or inadequate performance in the
3 construction, design, labor, services, materials, supplies, equipment, systems
4 or products provided.

5 “(3) A contractor that falsely swears to information submitted to the
6 board under ORS 701.046 or submitted in a registration of securities de-
7 scribed in ORS 701.046 (2), or that knowingly violates the provisions of ORS
8 656.029, 670.600 or 701.046, may not perfect a construction lien, file a com-
9 plaint with the board or commence an arbitration or a [*court action*] **claim**
10 **in a court of this state** for compensation for the performance of any work
11 on a residential structure or for the breach of any contract for work on a
12 residential structure that is subject to this chapter.”.

13

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Interoffice Memo

To: Craig P. Smith
Administrator

From: Kathleen Dahlin
Policy Analyst

Date: January 23, 2013

Subject: Options in Response to *Pincetich v. Nolan*

Background: Oregon Laws

Historically, Oregon laws have prevented unlicensed contractors from recovering moneys (compensation) owed them. See ORS 701.131 (previously codified at ORS 701.065). This prohibition extended to court actions, private arbitrations and CCB dispute resolution services (DRS) claims.

In 2003, the legislature added language¹ designed to benefit consumers by providing authority for unlicensed contractors to pursue third-party claims² in construction defect cases. By lifting the bar to allow unlicensed contractors to bring third-party claims

¹ The law, now codified at ORS 701.131, was previously codified as ORS 701.065. In 2003, the legislature added section (1)(d) to ORS 701.065. Or Laws 2003, ch 675, § 71. (The language now appears in ORS 701.131(1)(c)). The new language provided that:

- (d) The claim:
 - (A) Is directed against a person or entity that:
 - (i) Is subject to ORS chapter 671, 672 or 701;
 - (ii) Provides construction or design labor or services of any kind; or
 - (iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, systems or products; and
 - (B) Arises out of defects, deficiencies or inadequate performance in the construction, design, labor, services, materials, supplies, equipment, systems or products provided.

² A third-party claim in a lawsuit occurs as follows. One party (the plaintiff) sues another (the defendant). The defendant thinks that there is another party (a third-party) who is wholly or partially responsible for the damages. The defendant then sues that third-party in the same lawsuit. The third-party is thereafter referred to as a "third-party defendant."

against those whose actions caused or contributed to construction defects, the legislature intended to allow contractors to recover funds from other responsible parties and thereby ensure that consumers were made whole.³

In 2007, the legislature amended ORS 701.065⁴ as part of a comprehensive package that, among other things, renamed DRS actions as complaints rather than claims. The

³ See Testimony, Senate Committee on Rules, SB 906, July 10, 2003, Ex. M (statement of John DiLorenzo, Jr.)

⁴ In 2007, the legislature amended ORS 701.065. Or Laws 2007, ch 793, § 6.

701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a [*claim of a construction lien, or commence a claim with the Construction Contractors Board, in arbitration or in any court of this state*] **construction lien, file a complaint with the Construction Contractors Board or commence an arbitration or a court action** for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board:

(a) At the time the contractor bid or entered into the contract for performance of the work; and

(b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court [*shall*] **may** not apply the provisions of subsection (1) of this section to a [*lien or claim*] **contractor** if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid license at any time required under subsection (1) of this section, or had an initial issuance [*thereof*] **of a valid license**, and:

(A) The contractor was not aware of the requirement that the contractor be licensed, and the contractor submitted a completed application for a license within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a [*claim of a*] construction lien or commenced any [*other claim*] **proceeding** subject to the provisions of subsection (1) of this section, the contractor was licensed by the board; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor;

(b) The contractor was licensed by the board for some but not all of the times required under subsection (1) of this section and had a lapse in [*such*] **the** license and:

(A) The contractor was not aware of the lapse in the license for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for license renewal with the board;

(B) Except for perfection of a [*claim of a*] construction lien and [*a suit*] **a court action** to foreclose the lien, at the time the contractor commenced any [*other claim*] **proceeding** subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.115 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of [*a claim of*] a construction lien and a [*suit*] **court action** to foreclose the lien, the contractor's license was renewed under ORS 701.115 for the entire time period for which a license was required under subsection (1) of this section, but not later than 90 days following perfection of the lien;

(c)(A) The contractor is a licensed developer and did not have a valid license during all or part of the period described in subsection (1) of this section;

legislature also changed the term "claim," used in ORS 701.065(1), to "court action." CCB, which sought the amendments, explained that there was no intent to make any substantive changes to the law. Instead, the language was designed to clarify the services to resolve disputes that CCB provided.⁵

Background: *Pincetich v. Nolan*

A 2012 Oregon Court of Appeals case called into question the legislative intent in adopting the 2003 and 2007 amendments. Despite what was intended, the court did not believe the law yielded those results.

The case at issue is *Pincetich v. Nolan*⁶

The facts of the case are as follows. Thomas and Frances Nolan (Nolans), husband and wife, contracted with John M. Pincetich (Pincetich), a licensed contractor, to build their home. The amount of the contract was \$286,271. Pincetich's liability insurance lapsed during the project. CCB suspended Pincetich's contractor's license. Fourteen days later, Pincetich obtained replacement insurance. CCB reinstated the license. However,

(B) The licensed developer was unaware of the license requirement and obtained a license within a time established by the board, not to exceed 90 days after the licensed developer learned of the requirement;

(C) The licensed developer was licensed at the time the licensed developer perfected the lien or commenced the [*claim*] **proceeding**; and

(D) Enforcement of subsection (1) of this section would result in substantial injustice to the licensed developer; or

(d) The [*claim*] **proceeding**:

(A) Is directed against a person or entity that:

(i) Is subject to this chapter or ORS chapter 671 or 672;

(ii) Provides construction or design labor or services of any kind; or

(iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, systems or products; and

(B) Arises out of defects, deficiencies or inadequate performance in the construction, design, labor, services, materials, supplies, equipment, systems or products provided.

(3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect [*a claim of a construction lien, or commence a claim with the board, in arbitration or in any court of this state*] **a construction lien, file a complaint with the board or commence an arbitration or a court action** for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter.

⁵ See Audio Recording, Senate Committee on Business, Transportation and Workforce Development, SB 94, Jan. 25, 2007, at 28:15 (statement of Bill Boyd); Audio Recording, House Committee on Consumer Protection, SB 94, May 4, 2007, at 54:20 (statement of Craig Smith).

⁶ See *Pincetich v. Nolan*, 252 Or App 42, 285 P3d 759 (2012).



some of the work Pincetich performed over six months was during the 14-day period his license was suspended. Later Pincetich claimed that the Nolans failed to pay him in full. He filed suit to recover the amount he claimed was due.

The trial court dismissed Pincetich's lawsuit because he was not licensed throughout the work period, as required by ORS 701.131. Pincetich appealed the decision to the Oregon Court of Appeals. On August 29, 2012, the court upheld the trial court and ruled in favor of the Nolans.

In its written opinion, the Court of Appeals noted that the legislature did not need to add the 2003 language. The claims bar in ORS 701.065(1) was limited to claims made "for compensation." Therefore, a contractor-defendant could already bring a third-party claim so long as it did not seek compensation. The 2003 amendment was unnecessary.

Also, in a footnote to the case,⁷ the Court of Appeals disagreed with CCB that the 2007 amendments did not change the law. The court believes that the law was changed in 2007. Now, an unlicensed contractor may file a counterclaim⁸ against the plaintiff *even if the claim seeks compensation*.

For example, if *the Nolans* had filed the lawsuit against Pincetich (for example, for defective work), Pincetich could have filed a counterclaim seeking the amount the Nolans did not pay him.

Problem

The 2003 law change was probably unnecessary.

The 2007 law change allows an unlicensed contractor to file a counterclaim against an owner for amounts claimed as compensation.

Solution

The options available to the board depend upon what public policy the board wishes to pursue (and agreement of the Governor's office).

⁷ Because the statement in the footnote was not essential to the decision, it is considered *dictum*. This means that while it is an authoritative statement by the court, it is not binding on future decisions.

⁸ A counterclaim in a lawsuit occurs as follows. One party (the plaintiff) sues another (the defendant). The defendant thinks that the plaintiff owes money or is wholly or partially responsible for the damages. The defendant then sues the plaintiff (makes a "counterclaim") in the same lawsuit.

Solutions

9) If the board agrees with a recent law firm article that "it is bad policy to allow unlicensed contractors to file suit in pursuit of compensation for construction work,"⁹ the simplest approach is to propose a repeal of both the 2003 and 2007 amendments that apply.

5) If the board wants to add remedies for contractors whose licenses lapse for part, but not all, of a work period, additional language is necessary. The board may simultaneously propose the repeal of the unnecessary 2003 amendments.

6) If the board is satisfied with the result of the *Pincetich* case, it may be sufficient to (1) propose a repeal of the unnecessary 2003 amendments or (2) take no action.

⁹ "The Dangers of Allowing Your Contractor's License to Lapse (and of Tinkering with Statutory Language)," Joseph, Bill (Dunn Carney Allen Higgins & Tongue, LLP).

FILED: August 29, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOHN M. PINCETICH,
dba John M. Pincetich Construction,
Plaintiff-Appellant,

v.

THOMAS M. NOLAN
and FRANCES A. NOLAN,
husband and wife,
Defendants-Respondents.

Clatsop County Circuit Court
092110

A144751

Paula Brownhill, Judge.

Argued and submitted on March 17, 2011.

Michael E. Haglund argued the cause for appellant. With him on the briefs were Shay S. Scott and Haglund Kelley Horngren Jones & Wilder LLP.

Sara Kobak argued the cause for respondents. With her on the brief were Noah Jarrett, Michael T. Garone, and Schwabe, Williamson & Wyatt P.C.

Before Armstrong, Presiding Judge, and Ortega, Judge, and Duncan, Judge.

ARMSTRONG, P. J.

Affirmed.

(10)

1 ARMSTRONG, P. J.

2 Plaintiff appeals a judgment that dismissed his claims against defendants on
3 summary judgment after the trial court concluded that ORS 701.131(1) barred him from
4 commencing an action against them to recover compensation allegedly owed him for his
5 work under a construction contract. We affirm.

6 Defendants contracted to pay plaintiff \$286,271 to construct a residence.
7 After plaintiff began to perform the contract, the Construction Contractors Board (CCB)
8 suspended plaintiff's license to perform construction work because he had allowed his
9 liability insurance to lapse. The CCB reinstated plaintiff's license when he obtained
10 replacement liability insurance 14 days later. Plaintiff worked for roughly six more
11 months to construct the residence after the CCB reinstated his license.

12 Plaintiff eventually claimed that defendants had not paid him amounts that
13 they owed him for his construction work. When defendants refused to pay, plaintiff filed
14 an action against them for breach of contract, *quantum meruit*, and claim on account to
15 recover amounts allegedly owed to him for his work on the house.

16 Defendants answered and filed counterclaims against plaintiff for breach of
17 contract, negligence, indemnity, and unlawful trade practices. Defendants also alleged,
18 as an affirmative defense, that ORS 701.131(1) barred plaintiff from commencing his
19 action against them because he had failed to maintain his contractor's license
20 continuously throughout his performance of the contract and his work on the house.

21 ORS 701.131 provides, as relevant:

1 "(1) Except as provided in subsection (2) of this section, a contractor
2 may not * * * commence an arbitration or a court action for compensation
3 for the performance of any work or for the breach of any contract for work
4 that is subject to this chapter, unless the contractor had a valid license
5 issued by the board * * *:

6 "* * * * *

7 "(b) Continuously while performing the work for which
8 compensation is sought."

9 Defendants moved for partial summary judgment in their favor on
10 plaintiff's claims on the ground that ORS 701.131(1) barred plaintiff's action. Plaintiff
11 opposed the motion, contending that there were triable factual issues on whether he came
12 within an exception in ORS 701.131(2)(c)¹ that prevented the court from applying the
13 claims bar in ORS 701.131(1). That exception provides:

14 "(2) The board, arbitrator or court may not apply the provisions of
15 [ORS 701.131(1)] to a contractor if the board, arbitrator or court determines
16 that:

17 "* * * * *

18 "(c) The proceeding:

19 "(A) Is directed against a person or entity that:

20 "(i) Is subject to this chapter or ORS chapter 671 or 672;

21 "(ii) Provides construction or design labor or *services* of any kind; or

22 "(iii) Manufactures, distributes, rents or otherwise provides
23 materials, supplies, equipment, systems or products; and

¹ The provision at issue was renumbered as a result of amendments adopted by the 2007 legislature after the occurrence of the events that gave rise to this action. Or Laws 2007, ch 836, § 58. Because the amendments did not alter the import of the statute as applied to this case, we cite the current version of it.

1 "(B) Arises out of defects, deficiencies or inadequate performance in
2 the construction, design, labor, *services*, materials, supplies, equipment,
3 systems or products provided."

4 ORS 701.131(2)(c) (emphasis added).

5 Plaintiff contended that his action against defendants was subject to the
6 exception because defendants qualified as residential developers and, therefore, were
7 subject to ORS chapter 701, thereby satisfying ORS 701.131(2)(c)(A), and the
8 proceeding arose out of defendants' inadequate performance of the services that they
9 provided in the construction of the house, thereby satisfying ORS 701.131(2)(c)(B).
10 Specifically, plaintiff contended that, as developers, defendants provided the service of
11 paying contractors and others for their work and that plaintiff's claims against defendants
12 arose from their inadequate, *viz.*, untimely, performance of that service.

13 The trial court granted defendants' motion for partial summary judgment
14 and dismissed plaintiff's claims against defendants. The court concluded that ORS
15 701.131(2)(c) was inapplicable because, even assuming that defendants were subject to
16 ORS chapter 701, "it is a stretch to say that their failure to pay plaintiff was the
17 inadequate performance of a service" under the terms of the exception.

18 Plaintiff appeals, contending that the court erred in concluding that the
19 exception in ORS 701.131(2)(c) was inapplicable.² Plaintiff contends that payment for
20 work is a service that developers provide within the meaning of ORS 701.131(2)(c) and

² Plaintiff also argues that the court erred in rejecting his contention that the claims bar imposed by ORS 701.131(1) violates the remedy clause in Article I, section 10, of the Oregon Constitution. We reject his remedy clause argument without discussion.

1 that genuine issues of material fact exist regarding whether defendants adequately
2 performed that service.

3 On review of a trial court's grant of summary judgment, we view the record
4 in the light most favorable to the party opposing summary judgment to determine
5 whether there is any genuine issue of material fact and, if not, whether the moving party
6 is entitled to judgment as matter of law. Andrews v. Sandpiper Villagers, Inc., 215 Or
7 App 656, 663, 170 P3d 1098 (2007).

8 Unless ORS 701.131(2)(c) applies, defendants are entitled to judgment in
9 their favor dismissing plaintiff's claims. Plaintiff acknowledges that the CCB suspended
10 his license during the time that he performed construction work for defendants. Because
11 plaintiff was not continuously licensed while performing construction work pursuant to
12 the parties' contract, ORS 701.131(1)(b) bars him from commencing an action for
13 compensation for that work unless the exception in ORS 701.131(2)(c) applies.

14 Whether ORS 701.131(2)(c) applies to plaintiff's action depends on
15 whether the term "services," as used in the statute, includes a developer's contractual
16 obligation to make payments for construction work. We review questions of statutory
17 interpretation for legal error. State v. Kuperus, 241 Or App 605, 607, 251 P3d 235
18 (2011).

19 Plaintiff contends that the trial court failed to interpret ORS 701.131(2)(c)
20 "fairly and consistent[ly] with its plain language and legislative intent." He contends that
21 a developer's role in construction includes facilitating timely payment of billings and that

1 a failure to properly perform that service affects each step of a project. He further
2 contends that the sequencing and timing of payments is critical to the proper completion
3 of a construction contract and, thus, a developer's failure to make timely payments
4 pursuant to a contract is inadequate performance of a service within the meaning of ORS
5 701.131(2)(c). However, our review of the history and purpose of the provision leads us
6 to conclude that it does not apply to plaintiff's action.

7 The purpose of ORS chapter 701 is to protect consumers from irresponsible
8 builders. *Parsons v. Henry*, 65 Or App 627, 629, 672 P2d 717 (1983), *rev den*, 297 Or 82
9 (1984). ORS 701.131(1) is one of the provisions in chapter 701 that the legislature
10 adopted to do that. It serves to deter unlicensed contractors from performing construction
11 work by denying them the ability to pursue claims for compensation for their work.

12 The legislature added the exception in ORS 701.131(2)(c) in 2003 in order
13 to further benefit consumers by providing authority for unlicensed contractors to pursue
14 third-party claims in construction-defect cases. The concern that motivated the
15 proponents of the exception to ask the legislature to adopt it was that the claims bar in
16 ORS 701.131(1) could prevent unlicensed contractors from pursuing third-party claims in
17 cases in which consumers sued them for damages for construction defects. Testimony,
18 Senate Committee on Rules, SB 906, July 10, 2003, Ex M (statement of John DiLorenzo,
19 Jr.). By lifting the bar to allow unlicensed contractors to bring third-party claims against
20 others whose actions had caused or contributed to construction defects, the provision was
21 intended to allow contractors to recover funds from other responsible parties and to

1 thereby better ensure that affected consumers were made whole. *Id.* Nothing about the
2 provision and its history suggests that it was intended to lift the claims bar to allow
3 unlicensed contractors to do the very thing that the claims bar is intended to prevent them
4 from doing--*viz.*, to bring claims for compensation for their work--yet plaintiff's proposed
5 construction of the exception would allow unlicensed contractors to do precisely that.³

³ We note that the proponents of the exception may have misunderstood the operation of the claims bar. The claims bar prohibited an unlicensed contractor or developer from commencing a claim to recover *compensation* for the performance of any construction work or for the breach of any contract for construction work. *Cf.* ORS 701.131(1)(b) (claims bar applies when contractor fails to maintain license continuously "while performing the work for which compensation is sought"). In that light, the claims bar arguably would not have prohibited an unlicensed contractor from commencing a third-party claim against a party responsible for causing a construction defect because such a claim would *not* have been *for compensation* for construction work or for breach of a contract for construction work. Thus, enactment of the exception may not have been necessary to enable unlicensed contractors to bring such third-party claims.

Moreover, 2007 amendments to ORS 701.131 appear to have rendered the exception in ORS 701.131(2)(c) superfluous. The legislature amended *former* ORS 701.065 in 2007 as part of a comprehensive set of amendments to chapter 701. *See* Or Laws 2007, ch 793, § 6. Where *former* ORS 701.065(1) barred an unlicensed contractor from commencing a *claim* in court, ORS 701.131(1) now bars an unlicensed contractor from commencing a *court action*.

The CCB, which sought the amendments, explained that the amendments were not intended to make any substantive changes to the law but, by changing the terminology used in chapter 701, would merely clarify the dispute-resolution services provided by the CCB. Audio Recording, Senate Committee on Business, Transportation and Workforce Development, SB 94, Jan 25, 2007, at 28:15 (statement of Bill Boyd), <http://www.leg.state.or.us/listn/> (accessed July 26, 2012); Audio Recording, House Committee on Consumer Protection, SB 94, May 4, 2007, at 54:20 (statement of Craig Smith), <http://www.leg.state.or.us/listn/> (accessed July 26, 2012).

Despite the CCB's stated intention, the amendments had a substantive effect. By changing the language of the claims bar to prohibit an unlicensed contractor from commencing a court action, rather than a claim, the amendments permit an unlicensed contractor to file any counterclaim or third-party claim, even if that claim seeks

1 Consistently with its text, context, and history, we conclude that ORS
2 701.131(2)(c) applies to construction-defect proceedings and, consequently, to claims
3 involving services whose inadequacy contributed to the defects that are the subject of the
4 proceedings. The action that plaintiff filed is not such a proceeding and, hence, is not
5 subject to the exception in ORS 701.131(2)(c). Therefore, the trial court properly granted
6 partial summary judgment dismissing plaintiff's claims on the ground that ORS
7 701.131(1) barred plaintiff from commencing the action.

8 Affirmed.

compensation for construction work, provided the contractor does not commence a court action for compensation. As a result, ORS 701.131(1), as presently enacted, obviates the need for ORS 701.131(2)(c) to accomplish its purpose of permitting unlicensed contractors and developers to bring third-party claims because ORS 701.131(1) does not bar such claims.

