

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**03-112**

**STANLEY RICHARD GORDON**

**VERSUS**

**GLEN HURLSTON, M.D.**

THIBODEAUX, J., dissenting in part.

The majority affirms the trial court on Dr. Hurlston's reconventional demand of \$53,354.55 and affirms the trial court's denial of Mr. Gordon's request for past due wages. I disagree on these two issues.

The plaintiff in *Hagberg v. John Bailey Contractor*, 435 So.2d 580 (La.App. 3 Cir. 1983), *writ denied*, 444 So.2d 1245 (La.1984), sought payment for work it did in connection with rejuvenating and resurfacing streets in Lake Arthur, Louisiana. The general contractor, with which the sub-contractor company worked on the project, refused to pay because it found out that the sub-contractor failed to maintain its contractor license and was not licensed at the time the road work was done. However, at the time the two contractors entered into the agreement to upgrade the streets, the sub-contractor was properly licensed to do the work.

After noting that the purpose of the state's contractor's licensing requirement "is [for] the protection of general public 'against the incompetent, inexperienced, unlawful and fraudulent acts of contractors,'" this court held that this case "does not present a situation of the type within the intended scope of protection of the licensing statute." *Hagberg*, 435 So.2d at 586. We further held "[w]here

incompetency or inexperience or fraudulence is not involved, the licensing statute can not be invoked to avoid payment of valid charges.” *Id.* Likewise, in the present case, Dr. Hurlston does not allege that Mr. Gordon was incompetent in providing nurse anesthetist services, nor does he allege that Mr. Gordon was inexperienced or acted fraudulently. Mr. Gordon testified that he was unaware that his temporary license had expired and there is no evidence in the record to show that Mr. Gordon did not perform his duties competently. He certainly was experienced in that he had worked for Dr. Hurlston since June 30, 1999.

The majority seeks to distinguish *Hagberg* by observing that “[i]n such a sensitive profession [medical] as this, the importance of ensuring proper training through licensing procedures takes on a high level of importance” because “[m]edical professionals . . . are directly responsible for the health, safety, and welfare of the people they treat.” Indisputably, this is true. However, isn’t a contractor which is in charge of repairing streets also responsible for the safety and welfare of the citizens which use those streets? Furthermore, there is not one allegation of Mr. Gordon’s incompetence, inexperience, or fraudulent conduct. The majority’s attempt to distinguish *Hagberg* is unpersuasive. Mr. Gordon’s failure to maintain his nurse anesthetist license cannot be invoked by Dr. Hurlston to avoid payment of valid charges for work done by Mr. Gordon. That Mr. Gordon was not licensed is a matter to be dealt with by the appropriate state licensing authority. Dr. Hurlston has collected for these services and Tri-Care or an insurer may or may not seek reimbursement for these charges which have been collected by Dr. Hurlston. What if reimbursement is not sought? Does Dr. Hurlston get the benefit of the services performed by Mr. Gordon but Mr. Gordon does not?

Tri-Care has only indicated it *may* seek reimbursement from Dr. Hurlston for \$13,194.56. Dr. Hurlston has not reimbursed Tri-Care for that amount. He,

therefore, has not shown a loss of \$13,194.56. An intention by Tri-Care to seek reimbursement is too speculative and should not be a basis for recovery. The majority has effectively lowered the standard for a breach of contract recovery based on an *intent* to recover. That is improper. I, therefore, would amend the trial court's judgment to award Dr. Hurlston \$40,159.99 on his reconventional demand.

For the foregoing reasons, I respectfully dissent.