
Contractors May Now Bring Direct Action for Economic Losses Against Design Professional

By Andrew B. Cohn, Esquire, Kaplin Stewart

A very recent Pennsylvania Supreme Court opinion (January, 2005) has significantly changed Pennsylvania law, allowing a general contractor to directly sue an architect in negligence for additional construction costs caused by defective plans, drawings, and specifications. Based on this decision, contractors working on Pennsylvania projects may now bring direct actions against design professionals to recover purely economic losses caused by errors and omissions in their design documents.

In *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, a general contractor on a public school project claimed that it incurred substantial additional construction costs because the aluminum curtain wall, sloped glazing, and metal support systems could not be installed and constructed through the use of normal and reasonable construction means and methods. The contractor claimed that the project drawings and specifications were deficient and caused the additional costs, which resulted from special construction means and methods, which the contractor was compelled to utilize.

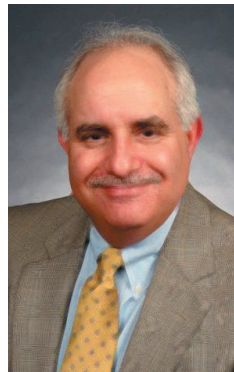
The general contractor sued the architect directly under the theory of "Negligent Misrepresentation," alleging that the architect's specifications were false and/or misleading. The contractor had contracted with a school district, and therefore it did not have a direct contract with the architect. Moreover, its damages were purely *economic* (i.e. it did not allege bodily injury or physical damage to property). The trial court dismissed the contractor's suit, and the Pennsylvania Superior Court affirmed that decision, applying established Pennsylvania law which had previously held that a third party contractor could not directly sue a design professional for negligence causing purely economic losses. However, the Pennsylvania Supreme Court reversed, holding in a decision of first impression by the Supreme Court, that a contractor can sue a design professional in negligence for purely economic losses resulting from defective plans and specifications.

The Supreme Court reasoned that contractors fall squarely within the class of companies which reasonably rely on the representations of design professionals in their design documents. Applying Section 552 of the Restatement of Torts (2d), the Court stated that it was reasonable for a design professional to expect that contractors would rely on information supplied in project design documents, and reasonably foreseeable that contractors could incur economic losses if the design information was incorrect or erroneous. These expectations,

according to the Court, reflected modern business realities, which justified holding design professionals responsible for economic harm caused to those who rely on this information in project plans and specifications.

The significance of this decision cannot be overstated. In addition to their contractual responsibility to their clients, Pennsylvania design professionals will now be exposed to direct causes of action for economic losses sustained by contractors who rely on defective plans and specifications. Such damages may exceed those sustained by a design professional's clients. On the other hand, contractors (and most likely subcontractors) now have the option, in addition to seeking change orders from owners under their contracts, to bring a direct action against a design professional for increased construction costs caused by design errors and omissions.

Those involved in Pennsylvania construction should be aware of this new development in the law, and should consult with their construction counsel on the impact to their business of this important new decision.



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