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ALABAMA CONSTRUCTION LAW NEWSLETTER

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The following are summaries of recent court decisions affecting the construction industry in Alabama. If you have any questions, please contact Larry S. Logsdon or Oscar M. Price at 205-870-0555 or at llogsdon@wallacejordan.com.

Owner Required to Provide Notice and Opportunity to Cure

City of Mobile v. Bill Harbert Constr. Co., 2009 WL 2343710 (Ala. 2009).

In this case, the general contractor sued the City of Mobile alleging that it had been wrongfully terminated from two projects for the City. The contractor argued that the contract between the parties required the City to provide sufficient notice and an opportunity to cure, and that the City had not complied with the contract when it terminated the contractor. In response, the City argued that the contractor repudiated its obligations by sending three separate letters to the owner disputing repair methods on the project, and that the board was thereby excused from providing notice and an opportunity to cure. However, the Court held that the letters from the contractor to the project manager were not a repudiation of contract, and rather reflected a dispute between the contractor and the manager a method of performance of the project. Therefore, the City was required under contract to provide a 10-day notice and an opportunity to cure before it could terminate its contract with the contractor.

Subcontractor Required to Indemnify Contractor Against Claim Made by Other Subcontractor

Doster Constr. Co. v. Marathon Electrical Subcontractors, 2009 WL 3064789 (Ala. 2009).

Indemnification claim that crane-testing subcontractor made against general contractor regarding crane-testing subcontractor's liability concerning personal injuries sustained by electrical subcontractor's employee, who was injured while repairing crane, fell within parameters of indemnity clause of subcontract between general contractor and electrical subcontractor; employee's own negligence contributed to accident, and crane-testing subcontractor's claim concerned a liability of general contractor that arose indirectly from negligence attributable to electrical subcontractor.

Improvements Made on Group Home Required Builder's License

Williams v. Hill, 17 So. 3d 764 229 (Ala. 2009).

Contractor entered into an oral agreement with defendant to provide to $20,000 worth of improvements to a group home for disabled individuals. The court held that the improvements performed by the contractor on the property qualified as residential construction, and therefore, required a residential homebuilder's license. The court held that because the contractor was not licensed to make the improvements on the property at issue, it had no standing to maintain a civil action seeking reimbursement for the improvements on the property.

Bonding Company Must Disclose Financial Stability of Contractor if Asked by Owner

Travelers Cas. & Surety Co. v. Crystal Towers, LLC, 2009 5068823 (S.D. Ala. 2009).
In this case, the court was asked to decide whether a bonding company who provides a payment/performance bond has a duty to disclose to the owner the financial strength of the contractor. The court held that when an owner specifically inquires about the contractor's financial strength and its ability to complete the project, the bonding company could have an obligation to disclose all material facts within its knowledge.

Repair Work to Residence Required License

Hollinger v. Wells, 3 So. 3d 216 (Ala. Civ. App. 2008).
In this case, a contractor was hired by a homeowner to make repairs to a residence. Thereafter, the contractor sued the homeowner alleging breach of contract and seeking a lien against the residence alleging amounts due under the contract. The homeowner claimed that the contract with the contractor was not valid since the contractor did not have a valid license as a homebuilder pursuant to Ala. Code § 34-14a-1. The contractor responded by arguing that the evidence failed to show that the building upon which the contractor performed repairs was a "residence" or "structure" within the meaning of the licensure statute. However, the court held that the contractor was repairing or improving the defendant's residence, which included roofing work, repairs to the back porch, replacement of metal in eaves, and replacement of crown molding. Since it was undisputed that the contractor never had the requisite license pursuant to the Homebuilders Licensure Statute, the court held that he was statutorily barred from bringing or maintaining a breach of contract action.

Condo Owner Permitted to Bring Action Against Contractor Hired by Association

Wilson v. C-Sharpe Co., LLC, 2009 WL 3064710 (Ala. Civ. App.)
The supreme court was asked to decide whether a condominium owner was able to bring a negligence action against a roofing contractor and subcontractor who had been hired by the condominium association to install a roof on the condominium. The court held that the condominium owner was an intended third-party beneficiary of the contract between the association and the contractor, and therefore he was able to maintain a lawsuit on his own behalf against the contractor. However, the court held that the owner could not maintain an action against the manufacturer absent evidence that the manufacturer had a contract with the association.

License Needed to Refurbish Apartment Units

KLW Enterprises, Inc. v. West Alabama Commercial Industries, Inc., 2009 WL 2840794 (Ala. Civ. App.)
December 2007, a contractor and apartment owner entered into a contract in which the contractor agreed to refurbish 74 apartment units. While the contractor was in the process of performing its work, the owner demanded that it leave the job site. Thereafter, the contractor recorded a lien on the property at issue, and filed a lawsuit for breach of contract and recovery for work and labor performed. The owner moved for summary judgment on the basis that the contractor was not licensed as a general contractor in Alabama when it entered into the contract. The contractor asserted that its lack of a general contractor's license should not preclude payment since, it argued, the owner had knowledge that it was not licensed and was therefore equally at fault. The court disagreed, and found that the lack of a general contractor's license was a complete bar to recovery.

Late Fee and Attorney's Fee Provision in Contractor's Invoice Not Enforceable

Debbie Whorton v. DL Bruce, 17 So. 3d 661 (Ala. 2009).

In this case, the general contractor was hired by a condominium owner to install carpet in her condominium. Following the completion of the work, the contractor sent an invoice to the owner with the balance due and further stating that any amounts not timely paid would be subject to a late charge, attorney's fees, court costs and collection fees for any amounts unpaid. After receiving the invoice from the contractor, the condominium owner refused to pay the contractor alleging that she was entitled to a set-off against the contractor's claims because of damage to her furniture caused by the contractor's employees and for faulty work. The court held that the contractor was not entitled to attorney's fees because the attorney fee and late charge provisions contained in the invoice had not been communicated to the condominium owner until after the work had been completed and because there was no evidence showing that the condominium owner consented to these provisions. However, the court upheld the trial court's ruling that the work was performed in a workmanlike manner. Therefore, the contractor was entitled to the principle amount due from the owner.

Material Testing Firm Liable to Contractor Despite Lack of Contract

Qore, Inc. v. Bradford Building Company, Inc., 2009 WL 1643346 (Ala. 2009).

General contractor brought negligence action against construction materials testing firm alleging negligent work resulting in damage to a commercial construction project. The defendant denied liability in part on the argument that it had no contract with the general contractor and therefore neither owed nor breached a duty to the general contractor. The court upheld a verdict in favor of the general contractor, noting that a breach of a duty that results in injury to a third party who is within the foreseeable area of risk is actionable negligence. The general contractor presented evidence that if the construction materials testing firm had not breached its contract with the owner, the damage to the project would not have happened.

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If you have any questions or comments about these recent decisions or other matters, please contact Larry Logsdon or Oscar Price via phone at (205) 870-0555 or via e-mail at llogsdon@wallacejordan.com.

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