Wallace, Jordan, Ratliff & Brandt, L.L.C.
Attorneys & Counselors

CONSTRUCTION LAW UPDATE

Below are recent court decisions effecting contractors working in the construction industry in Alabama. A full text of these and other decisions are available on the Wallace, Jordan, Ratliff & Brandt, L.L.C. web site at **www.wallacejordan.com**.

Enforceability of an Arbitration Provision in a Construction Contract

Many contractors are including provisions in their contracts requiring that any claims brought against the contractor must be brought through arbitration and not before a jury. The recent decision of Sisters of the Visitation v. Cochran Plastering Co., Inc., No. 1981513, 2000 WL 264243 (Ala. Mar. 10, 2000) found that an arbitration provision in a construction contract was not enforceable because the contract did not effect "interstate commerce." Sisters involved claims brought by a monastery located in Alabama against an Alabama company that was hired to do plumbing and various repair work on a chapel. The court found that, among other things, all of the parties to the contract were "Alabama residents." The court also noted that there was no evidence that tools, parts or service traveled across state lines.

The court appeared to leave open the possibility that a carefully drafted construction contract could still trigger arbitration even if the work is done by an Alabama contractor in Alabama. The contract should specifically set out the effect that the contract has on states other than Alabama and the contractor should keep any evidence of contact with other states related to the construction.

Court Affirms the Rule of *Caveat Emptor* in Disallowing a Claim by a Second Purchaser Against the Original Contractor

On April 14, 2000 the Alabama Supreme Court in Boackle v. Bedwell Const. Co., Inc., 2000 WL 378191(Ala. 2000)[1] found that a second purchaser of a home was prohibited from bringing a contract or warranty claim against the contractor that built the home. This case involved a homeowner's attempt to sue the original builder for problems related to synthetic stucco. The court found that there was no implied warranty of habitability in the sale of used residential real estate, and the rule of *caveat emptor*, or buyer beware, still applied.

Verdict Against Pool Contractor Overturned

On March 24, 2000, the Alabama Court of Civil Appeals in Pools v. Cantwell, 765 So.2d 676 (Ala.Civ.App. 2000) overturned a $5,000 verdict against a pool contractor in a case brought by a landowner. The court found that the landowner did not show sufficient evidence that he suffered a "diminished value" in the amount of $5,000. The court noted that the "diminished value" is "the difference between the market value of the pool as completed and the market value of the pool as warranted." They concluded that the landowner had not met his burden since the only

[1]The firm of Wallace, Jordan, Ratliff & Brandt, L.L.C. represented the prevailing party in this appeal.

evidence presented at trial was testimony that a $1,200 ladder had been damaged because it had concrete on it and that he estimated it would cost about $2,000 to replace sod around the pool area.

Six-Year Time to Sue Requirement Upheld

In Mitchell v. Richmond, 754 So.2d 627 (Ala.1999) the court upheld a previous ruling that a breach-of-warranty cause of action against a contractor or architect must be brought within six years from the completion of the structure. In that decision the court rejected the homeowner's argument that Alabama Code Section 6-5-220 *et seq.*, (which requires that certain construction claims must be brought within two years from discovery) did not revive the homeowner's barred claim.

Subcontractor Responsible for Claims Against General Contractor

In Stone Building Co. v. Star Electrical Contractors, Inc., No. 1990085, 2000 WL 1841877 (Ala. Dec. 22, 2000) the court upheld an indemnity provision in a contract between a general contractor and an electrical subcontractor. The Indemnity provision stated that the subcontractor would be responsible for all claims against the general contractor. In the suit both the general contractor and subcontractor were sued by an employee of a drywall subcontractor that was injured when he was shocked and fell from a ladder while working on a job. The court found that, based on the indemnity provision in the contract, the electrical subcontractor would have to pay the attorneys' fees of the contractor and reimburse the general contractor for $495,000 that it paid in a settlement with the drywall subcontractor. The court, in making that decision, did not appear to consider whether the injury was caused by anything done by the electrical subcontractor.

If you have any questions or comments about this or other matters, please contact Larry S. Logsdon by telephone at (205) 870-0555 or by e-mail to ll@wallacejordan.com.

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