

Wallace, Jordan, Ratliff & Brandt, LLC

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 Logsdon at 205-870-0555 or at ll@wallacejordan.com.

Hinkle Metals and Supply Company Inc., 909 So. 2d 843 (Ala. Civ. App. 2005)

A heating & cooling company obtained a bond from Ohio Casualty Insurance Company, in favor of the State of Alabama as a prerequisite for the company to become licensed by the Alabama Board of Heating and Air Conditioning Contractors. Hinkle Metals supplied approximately \$37,500 worth of materials to the heating & cooling company. When the company did not pay, Hinkle Metals sued the company and during the course of this lawsuit the company filed for bankruptcy. The company's indebtedness to Hinkle Metals was discharged in its entirety. Hinkle Met-

als sought recovery from the bonding company of the entity that filed bankruptcy. The bonding company denied Hinkle Metals' claim on the ground that the bond did not provide coverage.

Hinkle Metals then filed suit against the bonding company. The Court of Civil Appeals stated that Hinkle Metals may recover the money only if it can prove that the bond was intended for its direct, as opposed to incidental benefit. The Court stated that the purpose of the law is to protect the public with regard to the installation, service, and repair of heating and cooling systems.



The law's function is not to protect materialmen or subcontractors. Thus, Hinkle Metals failed to show that the bond was for their direct benefit and could not recover the money.

FabArc Steel Supply, Inc. v. Composite Construction Systems, Inc., 914 So. 2d 344 (Ala. 2005)

The Alabama Supreme Court found that a contractor was not liable under an indemnity provision for the death of an employee on a job where it was not clearly established that the death was caused by any work or operation of the contractor.

RLI Insurance Company v. MLK Avenue Redevelopment Corporation, 2005 WL 1415411 (Ala. 2005)



A developer brought a claim against the contractor's bonding company

asking the court to require the bonding company to hire a contractor and fix deficiencies caused by the general contractor. The Court, in requiring the bonding company to arrange to fix the defects, rejected the bonding company's argument that the work was acceptable because it was approved by a third party project engineer. Next, the Court did not allow the bonding company to offset

amounts owed by the owner to the contractor as the Court found that there was not enough evidence to dispute that the work done by the contractor was substantially complete so as to require payment by the owner.

Zanaty Realty, Inc. v. Williams, 2005 WL 3082791 (Ala. 2005)

The purchaser of a home brought a claim against, among others, the appraiser of the home alleging that the purchaser relied on the appraiser in making the purchase and that because the house had problems the appraisal was inaccurate. The Court overturned a verdict against the appraiser and found that the appraiser had no duty to the home purchaser. The Court found it persuasive that the appraiser was hired by the mortgage company that financed the purchase and that the appraisal contained language disclaiming any representations about the quality of the house.

Hartford Accident & Indemnity Company v. Cochran Plastering Company, 2006 WL 73735 (Ala. Civ. App. 2006)

After completion of the construction project, the plastering subcontractor sent a final invoice, not including the retainage, to the contractor along with a full release that would take effect upon payment of the invoice amount. The contractor refused to pay the invoice amount. The subcontractor sued the surety for the full amount owed, plus retainage, interest and an attorneys fee. The contractor came into the lawsuit and sent the subcontractor a check for the amount owed, not including the retainage. The subcontractor cashed the check but sent

a letter to the contractor stating that they were not dropping the lawsuit.

The contractor argued that by cashing the check, the subcontractor effectively

released the contractor and should drop the suit. The Alabama Court of Civil Appeals found in favor of the subcontractor and upheld the trial court's award of the retainage amount, interest plus an attorney's fee and costs. The Court of Appeals stated that since the contractor did not pay the final invoice amount within thirty days, the release issued by the subcontractor became void after that thirty day period. Also, the subcontractor did not waive his claims by cashing the check because there were no words on the check which said that cashing it



Cochran v. Ward, 2006 WL 204989 (Ala. 2006)

The Alabama Supreme Court upheld a \$350,000 jury verdict award to a homeowner who brought an action against the roof installation contractor and its sales representative. The homeowner claimed that the roof was improperly installed and that the defendants misrepresented that the installer was fully trained and qualified to complete the installation. The Court found that while there was evidence shown that the installer registered for the manufacturer's two-day training course, there was no evidence that the installer actually attended the course. Also, the evidence indicated that the roof was in fact improperly installed.



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

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