

INFORMATION EXCHANGE

Contractors Can Now Recover from Design Professionals for Defective Plans

By Timothy J. Woolford, Esq.,
Stevens & Lee

The Supreme Court of Pennsylvania recently held that contractors can recover from design professionals for additional costs they incur due to errors in the plans and specifications. Bilt-Rite Contractors, Inc. v. The Architectural Studio, 2005 Pa. LEXIS 99 (Jan., 2005). For years, Pennsylvania courts barred contractors from bringing direct actions against design professionals due to the lack of a contractual relationship between them. Now, however, the rules have changed and architects and engineers are no longer immune



from negligence suits by contractors. Therefore, if you can prove that your extra costs were due to errors and omissions in the plans and specifications, you can bring a direct action against the design professional without implicating or involving the owner. Before the Bilt-Rite case was decided, a contractor seeking to recover additional costs due to design errors had to bring a claim against the owner who, by virtue of the implied warranty of the adequacy of plans and specifications (sometimes referred to as the *Spearin* doctrine), could be liable to contractors for latent design errors. This ruling could dramatically impact the construction litigation landscape in Pennsylvania.

Factual Background

The landmark case, Bilt-Rite Contractors, Inc. v. The Architectural Studio (TAS), involved the construction of a new school by the East Penn School District. Bilt-Rite was the general trades contractor who, among other things, was responsible for the installation of the aluminum curtain wall, sloped glazing and metal support systems. The plans and specifications provided by TAS represented that these systems could be installed through the use of normal and reasonable construction means and methods. During construction, Bilt-Rite incurred significant additional costs because the design of the systems was defective and required Bilt-Rite to use expensive and special construction methods and design tables.

Procedural Background

Bilt-Rite brought an action against the design professional for negligent misrepresentation alleging that TAS negligently misrepresented that the systems could be installed through the use of normal means and methods. The trial court and Superior Court dismissed the case against TAS citing the economic loss rule. The economic loss rule provides generally that in the absence of a contractual relationship, an injured party cannot

LANDSCAPE CONTRACTORS SINCE 1974

COMMERCIAL • RESIDENTIAL

OUR ROOTS RUN DEEP

MAINTENANCE/LAWN SERVICE
WATER GARDENS • HARDSCAPING
LANDSCAPE DESIGN

C.E. PONTZ SONS, INC.
1890 MILLPORT ROAD
LANCASTER, PA 17602
PHONE (717) 394-9923

WWW.CEPONTZSONS.COM

Drywall Recycle Service

USA-Gypsum
190A Texter Mtn. Rd
Reinholds, PA 17569
Ph 717-335-0379
Fax 717-335-2561
www.usagypsum.com



Scrap out, loading & container service

recover on a theory of negligence for purely economic losses. This had been the law in Pennsylvania for many years. Unsatisfied with these courts' dismissal of its claims, Bilt-Rite took its case to the Supreme Court.

Analysis of Supreme Court Decision

The Supreme Court reversed the lower courts and held that Bilt-Rite stated a valid cause of action against the design professional for negligent misrepresentation, and the absence of a contractual relationship was not a bar to the claim. Bilt-Rite sued TAS on a theory of negligent misrepresentation pursuant to Section 552 of the Restatement (Second) of Torts, entitled "Information Negligently Supplied for the Guidance of Others." That section provides as follows:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Previously, Pennsylvania courts had held that Section 552 did not apply to design professionals who negligently prepared plans and specifications. The Supreme Court rejected prior law and determined that it does apply.

The Supreme Court's decision that design professionals can be held liable on a negligent misrepresentation theory was based primarily on five factors: 1) design professionals know their design will be utilized by others; 2) design professionals occupy a central role in the construction planning process and there is no reason to immunize them for their negligent preparation of plans and specifications; 3) the liability is not endless and is limited only to those contractors whom the design professional can foresee would be harmed by

INFORMATION EXCHANGE

the errors; 4) it is not unreasonable to place a duty upon design professionals to contractors; and 5) establishing a duty from design professionals to contractors is in the best interest of the public.

The Supreme Court concluded that TAS provided plans and specifications fully aware that these documents would be included in the bid package and would be provided to prospective bidders. TAS also knew that the bidders would receive the plans and specifications and rely on them in calculating their bids. Accordingly, Bilt-Rite could recover the economic damages it suffered as a result of the misrepresentations in the plans.

The Bilt-Rite decision will likely have a dramatic effect in the industry. If you believe that you have incurred or are incurring additional costs due to design errors, keep good records of the costs and the design defects that caused them. Because of this new ruling, you can bypass the owner and potentially recover from the architect or engineer who, on many projects, is the true culprit. If you have any questions about recovering additional costs caused by defective plans and specifications, please contact an attorney.

Upcoming Events

June 10: ABC on the Road,
Inn at Reading

June 14: Golf Outing,
Dauphin Highlands

July 20: Excellence in Construction Awards,
Hershey Lodge and Convention Center

Merit Shop Spokesman

CHAPMAN

Ford OF LANCASTER

At Chapman Ford of Lancaster, you'll always find the areas largest selection of cars and trucks at a great price, in stock, ready for immediate delivery. What you'll also find is Chapman Ford of Lancaster's history of great service after the sale. Great selection. Great service. Great prices.



PARTS AND SERVICE

DISCOUNTS UP TO 15% OFF

On any service for ABC members

New Vehicle Sales	Pre-Owned Superstore
5201 Manheim Pike East Petersburg	1485 Manheim Pike Lancaster
717-299-4331	717-431-0701
www.chapmanfordlanaster.com	