LEGAL REPORT

Neal Eckel
Farhang & Medcoff
8/10/22
neckel@farhangmedcoff.com

Until recently the law in Arizona allowed most project owners to file suit directly against a subcontractor or design professional for negligence, even if the owner did not have a contract with the sub or design professional. That law has now changed, so that owners can only directly sue a third party under limited circumstances, meaning that more claims may be brought by owners against the general contractors, who then have to pass down the claims to their subs or design professionals.

The Arizona Supreme Court recently ruled in *Cal-Am Properties v. Edais Engineering* (May 2022) that a property owner could not maintain a claim for negligence against a design professional absent a contractual relationship between the parties.

Cal-Am hired a general contractor, VB Nickle, to construct improvements at an RV park. VB Nickle in turn hired Edais Engineering to survey the property and place construction stakes. Edais conceded it placed the construction stakes in the wrong location and as a result the site plan had to be adjusted and eight RV parking spaces were eliminated.

Cal-Am sued Edais directly for negligence in the placement of the stakes. The court ruled that even though Edais admitted it was at fault, because there was no contract in place between Cal-Am and Edais, Cal-Am could not maintain a negligence (tort) claim against Edias.

There are some exceptions to the "no claim for negligence" rule, such as violations of public safety and health statutes, but economic damages such as loss of use of property wouldn't fall under that. Also, non-economic damages such as personal injury or personal property damage can give rise to negligence claims.

However, the court noted the owner still has remedies available, such as suing the GC for breach of contract (the GC could then sue the sub or design professional) or suing the sub or design professional for breach of contract as third-party beneficiary.[1]

[1] In order to recover as a third-party beneficiary of a contract, an intention to benefit that person must be indicated in the contract itself. The contemplated benefit must be both intentional and direct and "it must definitely appear that the parties intend to recognize the third party as the primary party in interest."