



Alerts

Architect Potentially Liable to Indemnify Owner for Electrical Subcontractor's Negligence

April 21, 2011

Professional Lines Alert

The Massachusetts Appeals Court has held in *LeBlanc v. Logan Hilton Joint Venture*, 78 Mass. App. Ct. 699 (2011), that an architect and its electrical engineering consultant can be held liable to indemnify the owner of a hotel construction project for an electrical subcontractor's negligent failure to place a warning sign in an electrical switchgear cabinet that allegedly caused plaintiff's decedent to be electrocuted five years after the construction was completed.

Defendant architect had entered into a comprehensive professional services contract with the owner, which purported to limit the architect's responsibilities for the contractors' failure to carry out the work in accordance with the contract documents. Specifically, the architect would not have any control over or be in charge of any acts of the general contractor or its subcontractors, who were to remain responsible for installed equipment systems and their operating instructions. On the duty side, the architect was to promptly inform the owner in writing of any deficiencies or deviations that came to its attention, to monitor the work to see that it was being performed in accordance with the construction documents, to arrange and observe tests and inspections required for check-out, start up and performance testing of all major equipment and specialized building systems including electrical systems, and to certify the contractor's work for payment purposes. The contract also required the architect to indemnify the owner against all financial losses caused by negligent acts, errors, or omissions committed by the architect and its consultants.

The architect hired an electrical engineering firm as a consultant to provide services on the electrical system for the hotel. The engineering consultant specified a switchgear cabinet that was supposed to have a warning sign on it to alert workers of the presence of two live electrical lines. The sign was never actually installed, despite an inspection report given to the engineering consultant advising of its absence. The engineering consultant responded by directing the electrical subcontractor to submit a shop drawing with the wording for the sign, which was ignored. The owner was never notified that the sign was not installed. The building was completed in 1999, and in 2004 plaintiff's decedent, a maintenance worker, was electrocuted when he touched a live line in the cabinet that was still without the warning sign.

The decedent's estate sued all of the parties involved in the project, and the owner and the electrical contractor/supplier asserted cross-claims against the

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architect and the electrical engineering consultant seeking indemnification and contribution. The trial court granted summary judgment in favor of the architect and its engineering consultant on all of the plaintiff's claims, as well as all the co-defendants' cross-claims, on grounds that the agreement between the architect and the owner exempted them from any duties to plaintiff for subcontractor's errors, and they had no duty to insure the implementation of warning signage on the electrical cabinet as required by the specifications. When plaintiff settled with the owner and the electrical subcontractor, those parties appealed the grant of summary judgment in favor of the architect and its engineering consultant. The appellate court affirmed in part and reversed in part.

The appellate court affirmed the grant of summary judgment adverse to the electrical subcontractor holding that it was not entitled to indemnification because it was the party that had failed to install the specified warning sign on the cabinet, despite the fact that it had been instructed by the engineering consultant to submit a shop drawing with the wording.

The appellate court reversed as to the grant of summary judgment on the indemnification claim by the owner. The court found that while the architect and its engineering consultant did not have authority over or responsibility for the electrical subcontractor, they did have duties to the owner to observe the work and to notify the owner in writing of the quality and quantity of that work. Those duties, the court specifically found, were particularly important because the owner possessed a vital long-term interest in the safety of the hotel's electrical equipment and also had an interest in the power to compel compliance with contractual specifications by withholding payment. This "chain of duty and risk" was foreseeable because the parties were dealing with the inherently dangerous component of electricity. The architect's failure to monitor and report deficiencies to the owner constituted a contractual breach and created a "field of risk for third parties likely to come into contact with the switchgear." A genuine issue of causal negligence existed that was comprehensible even to a layperson without the need for expert testimony. The court remanded on the issue of whether the owner and the electrical subcontractor had complied with the requirements of the state contribution statute.

Comment

This professional services contract between the architect and the owner was interpreted to find that the duties to monitor and inform the owner of deficiencies in the work, and then certify the work for payment outweighed the effect of the usual provisions that limit the architect's liability for the acts or omissions of the contractors and subcontractors. The court also found that the architect's indemnity of the owner was appropriate because the warning sign was specified by the architect's engineering consultant and was reported missing to the same consultant, who did not notify the owner. The court also grounded its holding in case law in Massachusetts that recognizes a "foreseeable exposure to danger" as grounds for extending a duty to third persons in a breach of contract setting.

For further information, please contact your regular [Hinshaw attorney](#).

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