



Alerts

Professional Engineers May Testify as Expert Witnesses Against Licensed Architect

May 27, 2015

Professional Lines Alert

Garden Howe Urban Renewal Associates LLC v. HACBM Architects, Engineers, Planners LLC, N.J. Super. Ct. App. Div., Docket No. A-1144-13T2 (Feb. 26, 2015)

Plaintiff owner accepted a proposal from defendant architectural firm to design an addition and various alterations to an existing four-story building and to provide some construction observation services. The parties entered into a standard AIA form agreement between owner and architect, which provided that the architect would provide its services in a manner consistent with professional skill and care. The owner subsequently sued the architectural firm for professional malpractice alleging, among other things, failure to provide adequate plans to construct the project.

During discovery, the owner disclosed an expert report by Abramson, a licensed architect, which merely addressed the replacement of an existing stairway, but did not provide any opinions that defendant architect breached the standard of care. The owner also disclosed a report by PCA, an engineering firm, that was signed by two professional engineers and a licensed building code inspector and provided opinions supporting the owner's claims against defendant architect. The report also stated that it had been prepared with Abramson's assistance.

Defendant architect moved to bar the testimony of the engineers and building code inspector from PCA and to strike their report based on their lack of qualifications to provide opinions on the standard of care for an architect. It also moved to bar Abramson from testifying and to strike his report because it did not offer any opinions on the violation of the architectural standard of care. The trial judge entered an order barring the reports, and allowed the engineers and the code official to testify only to factual issues. Abramson's testimony was limited to replacement of the stairway. The trial court granted defendant's motion for a directed verdict and dismissed the case with prejudice.

On appeal, the owner argued that the trial court abused its discretion by barring all of plaintiff's expert reports and limiting the testimony of plaintiff's experts at trial. A New Jersey intermediate appellate court reversed.

Question Before the Court

Service Areas

Professional Liability



Can professional engineering experts provide opinion testimony on a claim of architectural malpractice?

Yes. The court held that the general rule in New Jersey has been that the claims of architectural malpractice cannot proceed without a licensed architect's opinion. It noted, however, that recent case law had held that not all experts must possess a professional license, and whether an expert might testify in a case involving a claim of architectural malpractice would depend on the claim involved, the specific allegations made, and the opinions that the expert proposed to offer at trial.

The court found that the New Jersey Architectural Practice Act and the Engineering Practice Act recognize that there is an area of concurrent practice between these two disciplines, specifically in the area of building designs. These licensing statutes provide that engineers may design certain kinds of buildings and structures, and that both architects and engineers can administer construction for purposes of determining compliance with drawings and specifications. Because the statutes allow both architects and engineers to engage in building design and construction administration, some of the claims asserted by the owner might implicate "engineering education." Therefore, the court concluded that the trial court should have considered whether some or all of the claims asserted against defendant architect fell within those areas where the practice of architect and engineer overlap, and whether the owner's experts from PCA had the requisite knowledge and experience to offer opinions as to the standards of care that apply to architects in the performance of such services.

The court also held that the trial judge should have considered whether the relevant portion of PCA's report, which was allegedly prepared with Abramson's assistance, contained Abramson's opinions regarding the standard of care rather than just precluding him from testifying at trial.

What the Court's Decision Means for Practitioners

The appellate court rejected the summary application of the general rule that expert testimony by a licensed architect is needed to prove an architectural malpractice claim and resurrected the owner's whole expert case by mandating that the trial court carry out a detailed examination of the professional engineers' qualifications and the scope of their opinions before making such a drastic ruling striking their reports and barring their testimony. Prudent practitioners would still do well to avoid retaining experts whose opinions may be stricken for lack of qualifications.

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

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