Construction & Infrastructure Law Blog

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California Court of Appeal Limits Duties Owed by Construction Managers to General Contractors

By John A. Yacovelle and *Matthew W. Holder*

In a recent case the California Court of Appeal confirmed in an unpublished decision that, when a construction manager is tasked with supervising and managing a general contractor, the construction manager does not owe a duty of care to the general contractor to prevent economic loss. The Court reasoned that imposing such a duty would subject the construction manager to an untenable conflict in loyalties. Appellate courts in other states are split on this issue. *Ledcor Builders, Inc. v. Janez Development, LLC*, 2010 WL 925876 (Mar. 16, 2010).

The plaintiff in the case was Ledcor Builders, Inc. ("Ledcor"), who served as the general contractor on a residential development project called Oceanside Terraces. Ledcor alleged that the construction manager was a company called Janez Development, LLC ("Janez"), and that Janez had been hired by the owner of the project to "manage, observe, advise, and supervisor [sic] Ledcor's work" and "ensure that it was properly, competently, and timely performed." According to Ledcor, Janez did a poor job as the construction manager, which resulted in various delays and cost overruns on the project (Janez denied these allegations). Ledcor and the owner of the development project made competing claims against each other as a result of these delays and cost overruns. In addition, Ledcor filed a lawsuit against Janez for negligence, seeking the same sum of money from Janez that Ledcor was also seeking from the owner.

In response to the lawsuit, Janez immediately attacked the complaint with a demurrer, arguing to the trial court that Ledcor's negligence claim failed as a matter of law because Janez could not owe a duty of care to Ledcor, since Janez's job (as alleged by Ledcor in the complaint) was to "manage, observe, advise, and supervisor [sic] Ledcor's work." Instead, Janez owed a duty of care to its principal, the owner of the project. A finding that Janez also owed a duty of care to Ledcor would subject Janez to an untenable conflict in loyalties. In making this argument, Janez relied heavily on the case of *The Ratcliff Architects v. Vanir Construction Management, Inc.* (2001) 88 Cal.App.4th 595. In *Ratcliff*, the Court of Appeal had dismissed a similar negligence

claim filed by an architect against a construction manager, because the construction manager was responsible for supervising the architect, and hence could only owe a duty of care to the owner of the construction project.

The trial court sustained Janez's demurrer without leave to amend, and dismissed Ledcor's complaint. The Court of Appeal affirmed the trial court's decision in a unanimous unpublished opinion. The Court of Appeal explained that parties who are not in privity with each other generally do not owe one another a duty of care to prevent economic loss (as opposed to damage to person or property). Such a duty of care to prevent economic loss only arises when there is a "special relationship" between the parties. Whether or not a such a "special relationship" exists is a matter of public policy, and depends on the weighing of various factors, including the extent to which the underlying transaction was intended to protect the plaintiff, the foreseeability of harm to the plaintiff, the moral blame attached to the defendant's conduct, and the policy of preventing future harm. By way of example, the seminal California case on the subject found that such a "special relationship" could exist between a lawyer who drafts a will for his client, and the intended beneficiary of the client's will, even though the lawyer and the intended beneficiary are not in privity with each other. *Biakanja v. Irving* (1958) 49 Cal.2d 647.

In this case, the Court of Appeal agreed entirely with Janez that a construction manager that is tasked by an owner with supervising a general contractor cannot also owe a duty of care to the general contractor to prevent economic loss. Such a rule would put the construction manager in an impossible position. The nature of construction projects is such that the interests of the owner and the general contractor will frequently be adverse to one another in disputes such as pricing and scheduling change orders. What is good for the owner may not be good for the general contractor, and vice versa. When the construction manager has been hired by the owner to serve the owner's interests and supervise and manage the general contractor, the construction manager owes its duty to the owner, not the general contractor. A construction manager cannot be expected to owe a duty of care to both the owner and the general contractor, any more than a lawyer can be expected to owe a duty of care to both sides in an adversarial transaction or piece of litigation.

It should also be noted that in response to Janez's arguments, Ledcor relied heavily on out-of-state authorities for the proposition that construction managers should be held liable to general contractors for economic losses. In particular, Ledcor argued that courts in Illinois, New York, and Tennessee have imposed such a rule. The Court of Appeal did not address any of Ledcor's arguments regarding out-of-state authority, instead finding that California law was settled on the subject. For what it is worth, courts in Georgia, Indiana, Washington, and Virginia have ruled the same as California courts by dismissing negligence claims for economic loss filed by contractors against construction managers. In addition, courts in Ohio, Wyoming, Utah, and Nevada have denied tort recovery between other participants in construction projects, absent privity of contract.

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