Design Professional’s Duty to Provide Non-Negligent Plans

Introduction

A project architect or a design professional (“architect”) plays a key role on any construction project. The role of the project architect, its obligations and responsibilities are most often set forth in a written contract between the architect and owner. The scope of an architect’s liabilities, however, may not be limited to the terms of the contract and liability may extend to the harm suffered by a third party as a result of the architect’s failure to prepare plans with the reasonable skill, care and diligence of a competent design professional, that is, in a non-negligent manner. As a recent decision by the Arizona Court of Appeals demonstrates, not only may an architect’s liability extend to third parties, but an individual in an architectural firm may also be held personally liable for his or her failure to prepare non-negligent plans.

Privity Is Not Required to Maintain An Action for Breach of Implied Warranty to Provide Non-negligent Plans

A. Summary of Key Facts

In North Peak Construction, LLC v. Architecture Plus, Ltd., 254 P.3d 404 (Ariz. Ct. App. 2011), plaintiff, a general contractor, sued Architecture Plus, Ltd. and Mark and Audrey Fredstrom (collectively, “Architect”) for breach of implied warranty and negligence after plaintiff was allegedly required to demolish construction work built pursuant to the Architect’s plans. More specifically, Vern Haugen, the principal and managing member of North Peak Construction (the plaintiff), entered into a contract with the Architect for the design of a custom home to be built on a hillside lot that Haugen owned. The contract between Haugen and the Architect required the Architect to consider the requirements of the owner in designing the home. To assist Architect, Haugen provided the Architect with a topological map, marking the corridor within which the Architect was to design and align the house so as to maximize the view of the city. Haugen discussed with Fredstrom, the architect, the importance of properly orienting the home so as to maximize the view. Haugen planned to have North Peak build the house according to the Architect’s design.

Haugen then sold the lot and the Architect’s preliminary plans to Russell Scaramella. Subsequently Scaramella entered into a separate contract with the Architect for further design and alteration to the home. The final construction plans were signed and sealed by Fredstrom. Scaramella contracted with North Peak to build the home. After beginning construction, however, North Peak discovered that the Architect’s plans aligned the home so that it faced a water tank and mountain, rather than the city. As a result, North Peak was allegedly required to demolish construction work it had already performed and rebuild the home at a cost of approximately $164,800 in additional expenses.

To recover the damages it allegedly suffered, North Peak filed a complaint against Architect, asserting claims for breach of implied warranty and negligence. In its complaint, North Peak alleged that it had relied upon the Architect’s “design plans and their implied representation that such plans were prepared with the reasonable skill, care and diligence of a competent design professional, in a non-negligent manner, and in conformance with the project specifications as provided by Mr. Haugen and Mr. Scaramella.” Further to the point, North Peak alleged that the Architect “breached the implied warranty by providing deficient and substandard workmanship in designing and orienting the custom home on the lot without maximizing the views of the city lights as expressly required.” In its negligence claim, North Peak alleged that the Architect fell below the standard of care when it failed to orient the custom residence so as to properly provide views of the city.

The Architect filed a motion to dismiss, arguing that the essence of North Peak’s claim is one for negligence and that there was no contractually-based claim for breach of implied warranty insofar
as design professionals are concerned. Essentially, the Architect argued that North Peak’s negligence claim was no different than its breach of warranty claim. The lower court granted the motion to dismiss the implied warranty claim and also granted subsequent motion for summary judgment on the remaining negligence claim. North Peak appealed the trial court’s dismissal of its implied warranty claim.

B. Court’s Analysis

On appeal, the Arizona Court of Appeals held that the trial court had erred in dismissing North Peak’s breach of warranty claim. In so holding, the court relied on the Arizona Supreme Court’s holding in Donnelly Construction Company v. Oberg/Hunt/Gilleland, 139 Ariz. 184 (1984), for the proposition that a claim for breach of implied warranty may be brought against a design professional even in the absence of privity. Finding that the facts in the present case were analogous to the facts presented in Donnelly, the court stated that “because Donnelly recognizes that breach of implied warranty is a valid cause of action against a design professional and can be brought in addition to a claim for negligence, we must conclude that the court erred in dismissing North Peak’s implied warranty claim.” The court went on to further define the scope of the implied warranty, explaining that the implied warranty is “that an architect has exercised his or her skill with care and diligence and in a reasonable, non-negligent manner.” Additionally, the court ruled that Mark Fredstrom could be held personally liable because North Peak’s implied warranty claim was based on (1) North Peak’s alleged reliance on the architectural plans and specifications, (2) Donnelly’s recognition that “design professionals” warrant “that they have exercised their skill with care and diligence in a reasonable, non-negligent manner,” and (3) the alleged signing and sealing by Fredstrom of the plans and specifications.

Implications

The Arizona Court of Appeal’s holding in North Peak Construction, LLC has several significant ramifications for design professionals, as it appears to have expanded design professional’s liability. As an initial matter, the court of appeals expressed its opinion that an architect can be held liable for both breach of implied warranty and negligence. In addition, a claim for breach of implied warranty may be brought by a third party not in privity of contract with the architect. Finally, because the implied warranty claim is not based on the owner’s contract with the architect (or more specifically the architect’s firm), the architect may be personally liable for breach of the implied warranty to provide non-negligent plans. Given the expanded scope of architect’s liability, it is important to be aware of the potential for third party lawsuits for the preparation of negligent plans.

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