McKINNEY v. REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA et al.

COURT OF APPEALS OF GEORGIA

284 Ga. App. 250;
February 8, 2007

This was a personal injury case. Plaintiff was an employee of a subcontractor who was injured when he contacted an enclosed power line while operating a jack hammer. The trial court granted summary judgment to the defendant general contractors and property owner concluding that they were not liable to plaintiff because his supervisor had been adequately notified about the location of the buried electrical duct bank. The court found that any duty defendants had to warn plaintiff of buried electrical lines was satisfied by notice to plaintiff's supervisor.

BRITTON et al. v. FARMER et al.
COURT OF APPEALS OF GEORGIA

283 Ga. App. 733
February 23, 2007

This is a personal injury action. Plaintiff, a telephone company employee, was injured when he fell through an opening in the floor of the second story of a garage. The Court of Appeals found the company which built the garage and its president were entitled to summary judgment as they could not be liable for negligent construction unless they fraudulently concealed it, which was not the case here.

J. E. BLACK CONSTRUCTION COMPANY, INC. v. FERGUSON ENTERPRISES, INC.
COURT OF APPEALS OF GEORGIA

284 Ga. App. 345
March 20, 2007

A contracts between a subcontractor and general contractor provide that the subcontractor would charged actual cost plus 10 percent for materials. The general contractor alleged that the subcontractor did not charge actual cost, but a higher amount that it supported with price quotes from the supplier. The Court of Appeals upheld the trial court’s ruling on the fraud claim, finding that the general contractor had not shown that it reasonably relied on the quotes. The court stated that the general contractor had presented no evidence that the supplier intended to induce it to act or to refrain from acting. The supplier's general manager and showroom consultant both testified that the supplier did not know what the subcontractor did with its price quotes because it was not their business to know or care what kind of agreement a general contractor had with its

subcontractors. As for negligent misrepresentation, the general contractor had shown neither reasonable reliance nor economic injury. The general contractor had presented no evidence that it could have otherwise obtained the material for less money than the amount the general contractor paid the subcontractor. Indeed, the evidence was to the contrary.

GREEN v. EASTLAND HOMES, INC. et al. EASTLAND HOMES, INC. v. GREEN.
COURT OF APPEALS OF GEORGIA

284 Ga. App. 643
March 28, 2007,

This is a storm water run off claim brought by a home owner against a developer and contractor which performed various clearing and development activities on an adjoining property. The issue presented in the appeals was whether the landowner presented evidence showing that both the contractor and the developer engaged in activities that artificially increased the water runoff from their upper land onto her lower land. The Court of Appeals held that the combination of the lay testimony as to the excessive runoff and the expert testimony that such run off was caused by the development and construction activities required that summary judgment in favor of the contractor be reversed, but that the denial of summary judgment to the developer be affirmed. Neither the trial court nor the Court of Appeals could consider the credibility of the testimony presented. Moreover, merely because the county approved the development activities did not mean that either or both could be not be held liable for nuisance. Finally, the landowner's action against the alleged creators of the water-runoff nuisance was authorized, regardless of their having sold the property.

LANGFITT et al. v. JACKSON et al.
COURT OF APPEALS OF GEORGIA

284 Ga. App. 628
March 28, 2007

The Court of Appeals found that home owners were required to arbitrate claims against their builder pursuant to an arbitration provision contained in a warranty insured by a third party. This case is significant since it addressed several critical issues involved in the enforcement of arbitration agreements.

LANIER AT McEVER, L.P. v. PLANNERS AND ENGINEERS COLLABORATIVE, INC. et al.

COURT OF APPEALS OF GEORGIA
2007 Ga. App. LEXIS 539
May 16, 2007

The owner and developer of an apartment complex, brought suit against a professional engineering firm, seeking damages allegedly resulting from the negligent design of the storm water drainage system for the complex. The engineering firm moved for partial summary judgment, contending that its damages were limited, pursuant to the terms of the parties' contract, to the amount of fees paid to it for the project.

The trial court granted the engineer's motion and the owner/developer appealed. The Court of Appeals upheld the trial court and held that there was no conflict between the damages limitation clause and the public policy of Georgia; the clause did not violate O.C.G.A. § 13-8-2 (b); and, the contract term was not an unenforceable penalty.

DOCKENS v. RUNKLE CONSULTING, INC.

COURT OF APPEALS OF GEORGIA
2007 Ga. App. LEXIS 577
May 25, 2007

In this case a pro se plaintiff attempted to assert a claim against a licensed engineer. The engineer moved for summary judgment on the grounds that Plaintiff failed to comply with the affidavit requirements set forth in O.C.G.A. § 9-11-9.1 (a) and (d) (21). The court rejected plaintiff's argument that she was exempt from these requirements as she was pro se. The Court also rejected plaintiff's argument that the claim was for ordinary negligence and not professional negligence. Finally, the court rejected plaintiffs arguments that her fraud claims should survive on the grounds that she failed to allege facts and present evidence to set forth a prima facia case of fraud.

KENNEDY v. JOHN THURMOND AND ASSOCIATES, INC.

COURT OF APPEALS OF GEORGIA
2007 Ga. App. LEXIS 745
July 3, 2007

This matter involved a claim by a homeowner against a contractor that repaired a house after it was damaged by fire. Plaintiff alleged that the contractor had performed faulty work and argued that the trial court erred in finding that he had not proven damages. The Court of Appeals agreed finding that the trial court erred in ruling was that the homeowner was obligated to prove the fair market value of his house after the allegedly defective repairs were made. The proper

measure of damages was the cost to the homeowner to correct the alleged defects. The homeowner had presented evidence of such costs at trial.

The Court of Appeals upheld the trial court in directing a verdict on the counterclaim finding that the evidence established that any change order had to be prepared and signed, that without such a signed order the homeowner was not obligated to pay, and that there were no signed change orders. Moreover, after the homeowner had made his final payment, the contractor had signed a waiver acknowledging receipt of the final sum and expressly waiving and releasing any liens on the property. Thus, the contractor had no basis to recover for the allegedly unpaid change orders.