

Not So Fast: The Supreme Court of Texas Narrows the Scope of the Economic Loss Doctrine

Historically, Texas courts have applied the economic loss doctrine (ELD) to bar tort claims (negligence and strict products liability) against a manufacturer or seller of a defective product when the damage is limited to the defective product itself and did not cause damage to a person or to other property. In addition, Texas courts have held that the ELD precludes tort recovery for economic loss arising from a party's failure to perform under a contract when the harm consists only of the economic loss of a contractual expectancy.

In recent years, some Texas appellate courts have expanded the reach of the ELD to preclude tort claims where the damage alleged is the subject matter of a contract – even when there is no contractual privity between the plaintiff and the defendant. See *Schambacher v. REI Electric, Inc.*, (No. 2-09-345-CV) 201 Tex. App. LEXIS 6426 (Tex. App. – Fort Worth 2010, no pet.). In some cases, this can leave a plaintiff with no remedy when the damage is caused by a subcontractor's negligence.

On August 22, 2014, The Supreme Court of Texas restricted the reach of the ELD and held that the ELD does not bar tort claims merely because the loss involves the subject matter of a contract. *Chapman Custom Homes, Inc., et al v. Dallas Plumbing Co.*, No. 13-0776, 2014 Tex. LEXIS 690 (Tex. August 22, 2014). In *Chapman*, a builder contracted with a plumber to install the plumbing system in a house during original construction. After completion of construction, the homeowner and the builder sued the plumber and asserted breach of contract claims arising from extensive damages caused by plumbing leaks. The homeowner also asserted negligence claims against the plumber.

The trial court granted summary judgment for the plumber on the builder's breach of contract claims because the builder was not the owner of the property and did not suffer compensable damages. The court granted summary judgment on the homeowner's breach of contract claim because the homeowner was not a party to the plumbing subcontract. The trial court also granted summary judgment in favor of the plumber on the homeowner's negligence claim because the homeowner's pleadings alleged only a breach of contractual duties. The Dallas Court of Appeals affirmed the summary judgment for the plumber and held that the homeowner's tort claims were barred by the ELD because the homeowner's property damage was "a mere economic loss arising from the subject matter of the plumbing subcontract."

In an economically written opinion, the Supreme Court of Texas reversed and remanded the case to the trial court for further proceedings. The court held that the ELD does not bar the homeowner's negligence claims against the plumber. According to the court, the plumber owed a duty to the homeowner and that such duty was "independent of any obligation undertaken in its plumbing subcontract with the builder." *Chapman*, 2014 Tex. LEXIS 690. Consequently, damages caused by the plumber's breach of that independent duty "extend beyond the economic loss of any anticipated benefit under the plumbing subcontract." *Id.* The court cited its 1947 opinion in *Montgomery Ward & Co. v. Scharrenbock*, 146 Tex. 153, 204 S.W.2d 508 (Tex. 1947), in which it stated that "a common law duty to perform with care and skill accompanies every contract and that the failure to meet this implied standard might provide a basis for recovery in tort, in contract, or both under appropriate circumstances." *Id.* Notably, the court stated that a party cannot avoid tort liability to the world simply by entering into a contract with one party – otherwise the economic loss rule would swallow all claims between contractual and commercial strangers (citing *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 419 (Tex. 2011)).

The *Chapman* Court held that a party states a tort claim when the duty allegedly breached is independent of the contractual undertaking and the harm suffered is not merely the economic loss



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of a contractual benefit. The court concluded that the plumber's duty not to flood or otherwise damage the house is independent of any obligation undertaken in its plumbing contract with the builder, and the damages allegedly caused by a breach of that duty extend beyond the economic loss of any anticipated benefit under the plumbing contract. *Chapman*, 2014 Tex. LEXIS 690, at 6.

The Texas Supreme Court's opinion in *Chapman* certainly appears to clear the path to recovery for property owners who assert negligence claims against subcontractors for property damages caused by the subcontractors' negligent performance of their contractual duties. In property subrogation actions, particular care should be exercised in pleading negligence claims **and** damages. The key will be alleging that subcontractors have a duty not to cause extensive damage (fire, water, collapse) to the property in the performance of their contractual obligations.

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