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A Guide to a Design Professional's Potential Liability in Georgia

Gabriel Azar
Georgia State University College of Law

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Research Guides

A Guide to a Design Professional's Potential Liability in Georgia

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Guide Index

Home
Liability to the Client
Liability to the Contractor
Liability to Third Persons
Other Issues
Additional Resources

Home

Abstract

In all of an architect's undertakings in the design and coordination of a project, he or she must exercise particular standards of professional care and skill, in the interest of minimizing the risk of harm to others. The architect owes these duties to the client, contractors, and in some instances to third parties such as subcontractors, constructions workers, and those who foreseeably use the building. This research guide collects and organizes legal materials that discuss an architect's potential liabilities in Georgia.

Overview

The architect owes these duties to the client, contractors, and in some instances to third parties such as subcontractors, constructions workers, and those who foreseeably use the building.

In architectural malpractice litigation, three basic sources of liability may arise

1. Liability to the Client
2. Liability to the Contractor
3. Liability to Third Persons

Failures in the design and construction of architectural structures may result in various harms. Physical failures can result in personal injury to members of the public or a defective design may render a structure that a client cannot use for its intended purpose.

Under Georgia Law, architects may be held liable for professional negligence under theories of contract and tort for personal injury, property damage, or economic loss. This research guide presents resources and annotations regarding each of these potential

Scope

This annotation discusses the potential liabilities that architectural professionals in Georgia may encounter, as well as the particular issues associated with their litigation. Particularly, the guide provides information regarding liabilities that stem from professional conduct including design services and project supervision.

Purpose

This research guide seeks to present the legal issues relating to architectural negligence and to aggregate into one resource the legal research materials related to the subject.

The author hopes that design professionals as well as attorneys with little or no familiarity with the subject matter find the material accessible. With that hope in mind, you will find linked text throughout this guide, which when clicked will either present additional information or take the user to another helpful resource.

About the Author

Gabriel Azar, in the Fall of 2006, is a third year law student at the Georgia State University College of Law. He currently serves as Executive Editor of the Georgia State University Law Review. After graduating in the spring of 2007, Gabriel will pursue a career in Patent Law as an associate with Finnegan, Henderson, Farabow, Garrett and Dunner, LLP in its Atlanta office.

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User Warning

The annotations provided here do not constitute legal advice. This research guide is not comprehensive. Every case giving rise to potential liability for an architectural professional is complex and presents its own unique facts.

The author last updated this guide in November 2006. Legal materials are updated often. Therefore a user of this guide should always check any case or statute to ensure that it is still good law. Additionally, secondary sources, like the various journal articles and treatises provided, receive new annotations and updates on a regular basis. Look for the most recent version of the publication and always check in the supplemental pocket parts.

Do not rely on the author of guide's interpretation of the cases or statutes provided. The same caveat applies to authors of referenced treatises and journals.

Secondary Sources: This guide references many secondary sources that compile cases from various jurisdictions, e.g. American Law Reports (ALR). Because the legal issues considered by this guide—tort and contract— are matters of state law, only Georgia cases will have "binding effect" in Georgia. If, however, Georgia courts have not addressed a particular issue, Georgia courts may view as persuasive relevant decisions from other jurisdictions.

Finally, use this guide as a starting point. If you have questions about how to proceed from there, then talk to your reference librarians. They are your best resource in the law library.

Back to Top

Liability to the Client

Overview

Project clients may sue the architect for breach of contract or in tort for professional negligence. Disputes typically involve unanticipated project cost or alleged negligent design.

Project Fee Disputes

Clients generally have a contractual relationship with the architect. Clients therefore often sue for breach of contract *and* for negligence in tort.

1. Georgia Cases

a. Block v. Happ, 144 Ga. 145, 86 S.E. 316 (Ga. 1915). Call Number (South Eastern Reporter) | KF135 .S6 c.1

Architect sued client for the balance of the project fee when owner refused to pay the last fee installment, claiming that the architect's faulty design caused water damage to basement. Finding for the plaintiff-architect, the court noted that an architect has the right to sue for the project fee when the he has completed his contractual obligations and the owner accepts the work.

b. Wingate Land & Dev., LLC v. Robert C. Walker, Inc., 252 Ga. App. 818, 558 S.E.2d 13 (Ga. Ct. App. 2001). Call Number (South Eastern Reporter) | KF135 .S6 c.1

Court found that an architect could recover in quantum meruit when, although the parties agreed there was a contract, the parties did not have a full understanding of its terms. Because the parties had varying understandings of whether the architect would act as project manager, they had no "meeting of the minds," and the jury could award the architect damages for his fee in quantum meruit.

c. Matthews v. Neal, Greene & Clark, 177 Ga. App. 26, 338 S.E.2d 496 (Ga. Ct. App. 1985). Call Number (South Eastern Reporter) | KF135 .S6 c.1

Architectural firm recovered fees based on implied contract because client agreement provided not damages measure in the even that client did not proceed with construction.

2. Arbitration of Fee Disputes

Modernly, architects typically contract using standard A.I.A. forms, which call for arbitration of fee disputes. These forms are enforceable in

Georgia.

Articles

Charles R. Schrader, *Dispute Resolution Under the New AIA Documents—Mediation Comes of Age*, http://www.jordanschrader.com/articles/article0011.html.

Standard A.I.A. contracting forms can be found at http://www.engin.umich.edu/class/cee431/aia_docs.htm.

Negligent Design

1. Georgia Cases

- Tahoe-Vinings v. Vinings Partners, 424 S.E.2d 30, 205 Ga. App. 829 (Ga. Ct. App. 1992). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Architect hired by developer to design apartment complex could not be liable for negligent design to the party who later purchased project because he owed no duty of care to later purchasers. Further, later purchasers did not succeed on breach of contract claim because architect entered no contract with later purchaser.

- Wheat Street Two, Inc. v. Wise, Simpson, Aiken & Assoc., 208 S.E.2d 359, 132 Ga. App. 548 (Ga. Ct. App. 1974). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Owner sued architect for negligent design after plumbing burst and caused extensive property damage. Court found the architect liable because the architect did not execute his plans with the professional level of required care and because the owner proved that the contractor built the structure according to the architect's plans and specs. Court held for owner; however, it mitigated damages upon proof that specs complied with municipal code.

- Hous. Auth. v. Ayers, 88 S.E.2d 368, 211 Ga. 728 (Ga. 1955). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Architect allegedly failed to provide sufficient footing and foundations, which required client, the housing authority, to incur cost of acquiring additional property after construction began. Supreme Court of Georgia held that issues properly reserved for a jury in such a case include whether the architect acted with professional standard of care and whether such failure led to the authority's additional costs.

2. Georgia Statutes

- O.C.G.A. § 9-3-24 (2006), Actions on Simple Written Contracts

3. Secondary Sources

- G. H. Fischer, *Responsibility of One Acting as Architect for Defects or Insufficiency of Work Attributable to Plans,* 25 A.L.R.2d 1085 (2005). Call Number | KF132 .A522 2d ser.

  ALR annotation provides a selection of cases where the client seeks recovery for property loss based on a theory that the structure built according to the architect's plans did not meet the specifications contracted for.

- 5 Am. Jur. 2d Architects § 10, *Employment and Duties of Architects, Relation and Duties to Employer—Duty to Exercise Care and Skill* (2005). Call Number | KF154 .A852.

  Short encyclopedic explanation of the terms an architect impliedly asserts in a contract to render architectural services

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Back to Top

Liability to the Contractor

Overview

In these situations, the contractor or subcontractor alleges an injury or financial harm caused by the architect's failure to perform his or her job with the required care.

Economic Damages Suffered by Contractor

1. Geogia Cases

Mischaracterization of Site, Structure, or Subsurface Conditions. When contractors underestimate project costs based on these figures, the architect

supplying faulty figures may be held liable

- Gulf Contracting v. Bibb County, 795 F.2d 980 (11th Cir. 1986). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Architects and engineers were held liable for negligently failing to disclose subsurface debris in specifications, plans, and drawings. Although not in privity with the architect, the contractors bidding for the project could sue in tort. The architect created the specifications for the limited purpose of allowing contractor competing for the project to formulate their bids. The subcontractor's financial injury, therefore, was foreseeable

- Ballenger Corp. v. Dresco Mech. Contractors, Inc. 156 Ga App 425, 274 SE2d 786 (Ga. Ct. App. 1988). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  A subcontractor being sued for damages resulting from a faulty stem and chill distribution system entered a third-party complaint against the architect. The court found for the architect because the architect's plans met generally accepted architectural standards and because the subcontractor could not prove that the failures did not result from defective installation.

2. Secondary Sources

- Frank D. Wagner, *Tort Liability of Project Architect for Economic Damages Suffered by Contractor,* 65 A.L.R.3d 249 (2005). Call Number | KF132 .A522 3rd ser.

  This annotation collects the cases considering the question whether, and under what circumstances, an architect can be held directly liable in tort to a contractor who has suffered economic damages allegedly due to the architect's negligence.

Failure to Supervise Construction

In Georgia, unless an architect has a contractual obligation to supervise or control the construction site, he should not incur liability for injuries to workmen caused by ordinary negligence at the site.

These claims technically fall under the next section of this research guide because they involve claims by third person. The research materials are provided here because contractors may name architects as third party defendants when sued persons injured at the construction site.

1. Georgia Cases

- Yow v. Hussey, Gay, Bell & DeYoung Int'l, 201 Ga. App. 857, 412 S.E.2d 565 (Ga. Ct. App. 1991). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  The court recongizes that "in the absence or responsibility to supervise and control the construction work including site safety, the architect/engineer should incur no liability for injuries to workmen proximately caused by ordinary negligence at the site." Therefore, only when the architect has a contractual duty to exercise control over the worksite may he be held liable for injuries occurring at the scene

- Wood Bros. Const. Co. v. Simons-Eastern Co., 193 Ga. App. 874, 389 S.E.2d 382 (Ga. Ct. App. 1989). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Contractor's claim against project designer/supervisor for negligent supervision of construction arose out of contract between owner and designer/supervisor. Claim was defeated by lack of privity between contractor and designer/supervisor. *See also* O.C.G.A. § 51-1-11(a).

2. Secondary Sources

- Frank D. Wagner, *Liability to One Injured in Course of Construction, Based upon Architect's Alleged Failure to Carry out Supervisory Responsibilities*, 59 A.L.R.3d 869 (2005). Call Number | KF132 .A522 3rd ser.

  Annotation gives a comprehensive overview to various courts' approaches to the issue whether architects have a duty of supervisions for which they may be held liable.

- 5 Am. Jur. 2d Architects § 26, Persons Entitled to Enforce Claims Against Architect; Grounds for Claims, Grounds for Architect's Liability, Failure of Architect to Exercise Professional Care and Skill--Failure to Properly Supervise Construction (2005). Call Number | KF154 .A852.

  Encylopedic entry briefly discusses the scope of an architect's duty to supervise construction. It also presents the factors courts usually taken into consideration when determining whether architects have met their standard of care. It also provides a few cases—none from Georgia, however

- Kurtis A. Kemper, *Cause of Action Against Architect or Engineer for Negligent Inspection or Supervision of Construction*, 16 Causes of Action 499 (2005).

  Article discusses requires to make ***prima facie*** case against architect. It also discusses the potential defenses for varying fact patterns.

- 6 C.J.S. *Architects* § 23 (2006). Architects. Powers, Duties, and Liabilities. Call Number | KF154. .C6428.

Back to Top

Liability to Third Persons

Damage to Adjacent Property

1. Georgia Cases

- Bodin v. Gill, 216 Ga. 467, 117 S.E.2d 325 (Ga. 1960). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Owner of property adjacent to project construction has cause of action against architect whose alleged negligent design caused rainwater runoff damage.

2. Georgia Statutes

- O.C.G.A § 9-3-30 (2006), Trespass or Damage to Realty.

- O.C.G.A § 51-9-1(2006), Cause of Action for Interference with enjoyment of Property.

Premises Liability

An architect may be liable to persons physically injured on the site after project construction as a result of the architect's negligent design. Georgia courts have have acknowledged this right to sue in tort despite the lack of privity with the architect.

1. Georgia Cases

- Piedmont Hosp., Inc. v. Reddick, 267 Ga. App. 68, 599 S.E.2d 20 (Ga. Ct. App. 2004). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Evidence failed to show architectural firm's limited actions in designing hospital renovations caused the death of hospital patient alleged caused by airborne fungus due to poorly designed ventilation.

- Samuelson v. Lord, Aeck & Sergeant, Inc., 205 Ga. App. 568, 423 S.E.2d 268 (Ga. Ct. App. 1992). Call Number (South Eastern Reporter) | KF135 .S6 c.1.

  Injured pedestrian sued architect to recover for injuries. Court discussed the sufficiency of an expert affidavit to support a professional malpractice case. It notes that privity is not required for third party to sue in tort. Negligence ***per se*** may apply where arechitect's plans do not comply with municipal building code.

2. Georgia Statutes

- O.C.G.A. § 51-1-11. When Privity Required to Support Action; Product Liability Action and Time Limitation Therefore.

3. Secondary Sources

- Donald M. Zupanec, *Architect's Liability for Personal Injury or Death Allegedly Caused by Improper or Defective Plans or Design* , 97 A.L.R.3d 455 (2004). Call Number | KF132 .A522 3d ser.

  Annotation collects cases dealing with the question whether an architect is liable for personal injury or death allegedly caused by improper or defective plans.

- 5 Am. Jur. 2d Architects § 23, *Architects, Persons Entitled to Enforce Claims Against Architect; Grounds for Claims, Who May Bring Action Against Architect, Generally; Privity of Contract* (2005). Call Number | KF154 .A852.

  Entry discusses trend toward eliminating privity of contract as a prerequisite to professional malpractice claims.

- 65A C.J.S. *Negligence* § 393 (2006). Premises Liability. Engineers and Architects. Call Number | KF154. .C6428.

Establing the Standard of Care

Third persons must sue in tort for professional malpractice because they have no contractual obligation with the architect. In Georgia, the plaintiff must establish the standard of care for design professionals with expert testimony.

Georgia courts dismiss professional malpractice claims that do not include an expert testimony affidavit.

1. Georgia Cases

- Gadd v. Wilson & Co., Eng'rs & Architects, 262 Ga. 234, 416 S.E.2d 285 (Ga. 1992). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  Statute, O.C.G.A. § 9-11-1. requires an affidavit filed by a competent expert witness setting forth single negligent act allegedly committed by architect, although statute will be interpreted favorably to plaintiff.

- Hous. Auth. of Savannah v. Greene, 259 Ga. 435 (Ga. 1989). Call Number (South Eastern Reporter) | KF135 .S6 c.1

  In wrongful death action where decedent died by carbon monoxide poisoning allegedly caused by negligent design, court dismissed complaint because it did not have an expert affidavit attached.

2. Georgia Statutes

- O.C.G.A. § 9-11-9.1. Affidavit to Accompany Charge of Professional Malpractice

  Causes the dismissal of a malpractice suit where an expert affidavit was not filed, unless such an affidavit had been obtained and the plaintiff by mistake or neglect merely failed "to file it."

3. Secondary Sources

- Robert M. Schoenhaus, *Necessity of expert testimony to show malpractice of architect,* 3 A.L.R.4th 1023

  (1999). Call Number | KF132 .A522 4th ser.

  Annotation collects cases in which the courts discussed the need for expert testimony to assist the jury in determining the presence or absence of professional malpractice on the part of an architect.

Back to Top

Other Issues

Strict Liability

Georgia courts have not applied the tort theory of strict liability to architectural structures. Some scholars have, however, considered appying the doctrine to buildings as products. If strict liability applied, then a court could hold an architect liable for a poor buildling design even without showing any negligence in his or her design *process*.

Secondary Sources

- Edie Lindsay, *Strict Liability and the Building Industry*, 33 Emory L.J. 175 (1984). Call Number | K10 .O885

  Author expresses view that the complexity of building projects and the number of legal entities involved in their creation militates against the courts' analogizing them to products for which strict liability should apply.

Statutes of Limitations and Repose

Georgia has codified for architects statutes of limitations to limit the time after which an injury occured for an injured to bring suit. Georgia has also enacted statutes of repose to set a time limit on when a cause of action for malpractice can arise.

1. Georgia Cases

- U-Haul Co. of Western Georgia v. Abreu & Robeson, Inc., 247 Ga. 565 (Ga. 1981). Call Number (South Eastern Reporter) | KF135 .S6 c.1

- A subsequent owner's claim that damage to its building was a result of the architects' negligent design was barred because it was not brought within four years of the alleged defective construction.

- ○ Wellerton Co. v. Sam N. Hodges, Jr. & Co., 114 Ga. App. 429, 151 S.E.2d 481 (Ga. Ct. App. 1966). Call Number (South Eastern Reporter) | KF135 .S6 c.1

2. Georgia Statutes

- O.C.G.A. § 9-3-31. Injuries to personalty

Actions for injuries to personalty shall be brought within four years after the right of action accrues.

- O.C.G.A § 9-3-51. Limitations on recovery for deficiency in planning, supervising, or constructing improvement to realty or for resulting injuries to property or person

  No cause of action for architectural malpractice can arise beyond 8 years after substantial completion of the project.

3. Secondary Sources

- Robert Jandrlich, *The Effect of Georgia's Architectural Statutes of Limitations on Real and Personal Property Claims for Negligent Construction*, 7 Ga. St. U. L. Rev. 137 (1990). Call Number | .G352 .S797 .U589.

  Article discusses the Georgia Legislature's attempt to balance the interests of those injured by defective design and construction with those of architects and builders who would otherwise fall subject to potential liability in perpetuity.

- Jane Massey Draper, *When Statute of Limitations Begins to Run on Negligent Design Claim Against Architect,* 90 A.L.R.3d 507 (2002). Call Number | KF132 .A522 3d ser.

  ALR compiles cases in various jurisdictions in which courts have considered when the statute of limitations begins to run on a claim for professional negligence against an architect.

Back to Top

Additional Resources

Overview

Several additional sources are provided here. Many of them are comprehensive practice areas for contracts and tort law. Others deal specifically with the practice of architectural malpractice litigation.

Internet Articles

- Arthur O'Leary, *Doing Our Best to Avoid Claims Time to Sharpen up Our Practices*, http://www.dcd.com/oleary/oleary_novdec_2002.htm.
- National Society of Professional Engineers, *Model Architect and Engineer Liability Laws*, http://www.nspe.org/liability/in2-repos.asp.

Books

The following books give a comprehensive overview of claims against architects. They are not, however, Georgia specific. While many of the general principles remain the same, each state has its own appicable common law. Use these books with that caveat in mind.

- Robert F. Cushman & Thomas G. Bottum, Architect and Engineer Liability: Claims Against Design Professionals (1987). Call Number | KF2925.3 .A97
- John B. Miller, Architect/engineer liability, a Growth Period (1984). Call Number | KF2925.3 .M55
- John B. Miller, Architect/engineer Liability Through the Year 2000: Is It Absolute??? (1992). Call Number | KF2925.3 .M557
- Bob Greenstreet & Karen Greenstreet, The Architect's Guide to Law and Practice (1984). Call Number | KF2925 .G73 1984

Legal Database Research

A. Lexis-Nexis

Lexis is a structured, fee-based research system with access to billions of legal and news documents. It allows searching of

federal and case law and statutory materials as well as secondary sources like law reviews and treatises. The Shepherd's feature automatically indicates whether a particular case is good law.

Recommended databases for research on architectural malpractice in Georgia:

- GA State Cases, Combined GACTS
- GA - Official Code of Georgia Annotated CODE
- Georgia Law Reviews, Combined GALRV
- GA - Rules and Regulations of the State of Georgia GAADMN
- GA Agencies & Attorney General Opinions, Combined GAAGEN
- GA Bill Tracking and Full-Text Bills GABILL

Suggested Search Terms			
atleast5(architect!)	(malpractice or negligen!)	contract!	liab!

B. WestLaw

Westlaw is the other primary fee-based online research tool. Particularly useful features of Westlaw are its Key Digest System. West has assigned particular keys that corresond to issues relevant to architectural malpractice. By isolating these keys and narrowing the search to Georgia, you can uncover cases and statutes directly on point.

Some helpful Key numbers include the following:

272 NEGLIGENCE
272XVIII Actions
272XVIII(A) In General
272k1503 Conditions Precedent
272k1506 k. Affidavit or certification of expert.

272 NEGLIGENCE
272XVII Premises Liability
272XVII(G) Liabilities Relating to Construction, Demolition and Repair
272k1205Liabilities of Particular Persons Other Than Owners
272k1205(4) k. Architects and designers.

Suggested Search Terms			
architect! &	(malpractice negligen!) &	contract! &	liab!

C. Lexis-One

Lexis-one offers free case searching up-to-date through the last five years. Searching cases over the last five years will not result in thorough legal research. To stay up to date on new cases, though, it's not a bad choice for free research. Subscriptions are available as a lower-cost altnerative to a full legal service like Lexis or Westlaw.

D. Casemaker

Casemaker is a free legal research tool available to all Georgia Bar members. It has a fairly nice search engine that

allows access to state and federal materials. Casemaker includes historic to current cases, statutes, and regulations.

E. FindLaw

Findlaw provides information about general legal information. Search capabilities, however, are very limited. The narrow issue of architectural malpractice is not covered. However, as a general introduction to professional malpractice, check out Findlaw's guide to medical malpractice.

Comprehensive Secondary Sources

- 5 Am. Jur. Proof of Facts 3d Architect's Neligence § 57 (2005). Call Number | KF8933 .A42.

  This in-depth article focuses on the proof necessary to establish professional negligence by an architect, and the resulting liability, in contract and tort, for personal injury, property damage, or economic loss occasioned by such negligence. It highlights evidentiary burdens and necessary proof.

- 19 Am. Jur. Trials Architectural Malpractice Litigation § 231 (2006). Call Number | KF8913 .A5.

  Extensive guide provides information regarding every aspect of an architectural malpractice case. The author gives practice tips and relevant bibliographic information for every phase of from the pre-trial investigation, pleading, motions and discovery to the types of evidence to present at trial and the post trial motions.

Search Engines

Search engines are great way to jump start your research. You can find new articles written by lawyers, architects, students, and bloggers. As always, do not rely on solely on general internet sources.

Google	LYCOS	Altavista
Metacrawler	Yahoo!	Ask.com

Back to Top

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