ARCHITECTS BEWARE OF LIABILITY NOT ONLY FOR YOUR CONTRACTUAL OBLIGATIONS, BUT THOSE INCIDENT TO THOSE OBLIGATIONS

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Architects are of course bound to act reasonably in carrying out their obligations under architectural services agreements. Even if not specifically spelled out under such an agreement, obligations incident to those agreements can also subject an architect to potential liability for failure to act reasonably.

In Trikon Sunrise Associates, LLC v Brice Bldg. Co., Inc. et al., Fla. 4th DCA (4D09-752) (July 14, 2010), the tenant of a parcel of commercial real property, LA Fitness ("Tenant"), entered into a consulting agreement with the architectural firm of Saltz Michelson Architects, Inc. ("Architects") requiring Architects to furnish architectural services for the construction of a fitness center to be located on the subject property. About one year later, tenant hired a general contractor to carry out the construction of the fitness center ("Brice"). That contract provided that Brice would be responsible for and have control over construction means and methods, including safety precautions, and that Architects would not be responsible for Brice's failure to perform in accordance with the contract documents. The owner of the real property ("Trikon") was not a party to that agreement.

Brice commenced construction on the fitness center utilizing "tilt up" or "tilt wall" construction panels. The wall panels were temporarily braced when construction commenced in late October 2005. Just days later, Hurricane Wilma made landfall in South Florida. The temporarily braced walls could not withstand the hurricane forced winds and collapsed. Trikon filed suit against Brice, Architects, the project engineer, as well as the individual architect Mark Saltz ("Saltz"). Trikon alleged that Saltz and Architects committed professional malpractice by allowing the insufficient temporary bracing erection of the concrete panels to be installed in the face of pending hurricane forced winds. Trikon alleged that Architects and Saltz breached their duty to Trikon to act as a reasonable architect under the circumstances would have acted in ensuring the safety of the concrete wall installation taking place at the property.

Architects and Saltz filed a joint Motion for Summary Judgment arguing that neither owed any alleged duty pursuant to contract or otherwise. They argued that neither party could have any duty beyond that set forth in the contract, which provided that Brice was responsible for such means and methods. The trial court denied the Motion of Architects but granted the Motion as it pertained to Saltz. The Appellate Court agreed with the denial of the Motion as it pertained to Architect. The Court explained that while some of the actions or inactions complained of regarding Architects may not have fallen directly under the obligations of an architect as set forth in the contract, they could have been found to be incidental to the duties of an architect. If so, the architect has a duty to act in regards to that scope as a reasonable architect would within that community under similar circumstances. Without finding whether any such negligence had occurred in this case, the appellate court affirmed the trial court's denial of Architect's Motion for Summary Judgment.

As to the Summary Judgment entered in favor of Saltz, the appellate court reversed the Trial Court in that Florida recognizes a cause of action against an individual architect furnishing architectural services even when furnishing such services on behalf of a corporation. If Architects could indeed be found to have acted negligently, Saltz could likewise be found to have acted negligently on Architects' behalf.