

SC Litigation Update: Court of Appeals Addresses Disguised Equitable Indemnification Claims

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Stoneledge at Lake Keowee Owners' Association, Inc., et al. v. Clear View Construction, LLC et al. & Stoneledge at Lake Keowee Owners' Association, Inc., et al. v. Builders FirstSource-Southeast Group, et al.

These two appeals arose out of the same construction litigation in which MGC attorney Geoff Gibbon was involved by way of representation of a fourth-tier subcontractor to the general contractor. The case involved alleged construction defects at condominiums located on Lake Keowee in Oconee County, South Carolina. The general contractor filed cross-claims against all of the subcontractors asserting claims for negligence, breach of contract, breach of warranty and contractual and equitable indemnification. After numerous depositions, most of the subcontractors moved for summary judgment on the general contractor's cross-claims. The trial court granted summary judgment on all the cross-claims for Clear View Construction and Builders FirstSource, ruling that the general contractor's claims for negligence, breach of contract and breach of warranty were really just equitable indemnification claims and finding that there were no questions of fact as to the equitable indemnification claims because the general contractor was not free of wrongdoing. These appeals followed.

The Court of Appeals affirmed the trial court as to its rulings that the cross-claims for negligence, breach of contract and breach of warranty were really just disguised equitable indemnification claims. However, the Court of Appeals reversed the trial court and remanded the equitable indemnification claims for trial holding there was a question of fact for trial due to evidence that the general contractor was free of any wrongdoing. The Court of Appeals also addressed the general contractor's contractual indemnification claim in the appeal involving Builders FirstSource, and affirmed the trial court's ruling that there was no evidence of any written contract with an indemnification clause that applied to the construction project at issue, noting that the only contract in evidence between the parties was dated after construction was complete.

The key takeaway from these rulings, in our opinion, is that there is now binding South Carolina appellate case law that holds cross-claims, and probably even third-party claims, for negligence, breach of contract and breach of warranty by a contractor against its subcontractors that arise solely out of the contractor being sued by a homeowner for construction defects are merely equitable indemnification claims. Contractual indemnification claims are still separate and distinct but there must be evidence of a contract containing contractual indemnification language.

If you have any questions, please contact an MGC [attorney](#).

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ABOUT MGC ATTORNEY GEOFF GIBBON

[Geoff Gibbon's](#) litigation practice focuses on coverage, subrogation, construction, products, auto torts, trucking and premises liability. Click [here](#) for more information about Geoff.