

The Saiber Construction Law Column: September 2022

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In New Jersey, the “economic-loss doctrine” bars tort claims when the plaintiff’s only damages are economic in nature because, when parties enter into a contractual relationship, a contractual remedy flows from contract, not tort. The doctrine also applies when parties do not have a contractual relationship with each other but have separate contracts with a third-party – a common occurrence in the construction context where many parties – general contractors, subcontractors, suppliers, design professionals, and the like may directly contract with one party but not with all parties involved with a project. The doctrine prevents a party from bringing a tort action for what is more properly a contractual claim. *Crescent University City Venture, LLC v. Trussway Manufacturing, Inc.*, a case recently decided by the Supreme Court of North Carolina, provides a good illustration of how the economic loss doctrine works.

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In the Crescent University case, Crescent was the owner and developer of a project to build multiple student apartment buildings near the campus of the University of North Carolina at Charlotte. In 2012, Crescent contracted with AP Atlantic, Inc., which served as the general contractor for the project. AP Atlantic entered into several subcontracts, including one with Madison Construction Group, Inc., which provided and installed wood framing for the buildings. Madison, in turn, contracted with Trussway Manufacturing to procure the floor and roof trusses for the project. In 2015, after the project was completed and the buildings were occupied by students, occupants reported that their living room ceiling had cracked and was sagging. Initial inspections determined that the floor trusses between apartments were defective. An engineering company hired by Crescent subsequently determined that “the floor-truss defects were systemic and pervasive throughout the project,” presenting unsafe defects which needed to be corrected to bring the project back to acceptable standards.

In 2015, breach of contract lawsuits and counterclaims were filed by various parties for various claims, including claims relating to the defective trusses. Several years later, in 2018, Crescent filed suit directly against Trussway for negligence, claiming that Trussway’s negligent manufacture of the trusses resulted in Crescent sustaining \$8 million in damages for the repairs it had to undertake to the buildings and for costs relating to relocation of the students occupying the buildings. Crescent’s action against Trussway was consolidated with the other actions that had been filed.

Prior to trial, Trussway moved to dismiss Crescent’s action based on the economic loss rule, arguing that Crescent’s claims against Trussway arose under a contractual relationship, and not because of a violation of any other law or duty owed by Trussway. The North Carolina Business

Court agreed and held that “because Crescent has not alleged or forecast evidence showing the breach of any separate or distinct extra-contractual duty imposed by law, . . . Crescent may not maintain a negligence claim against it.” The Business Court therefore dismissed Crescent’s negligence claims against Trussway. Following an appeal by Crescent, the Supreme Court of North Carolina held that the Business Court properly applied the economic loss rule and was correct in dismissing Crescent’s negligence action against Trussway.

Although the North Carolina decision is not binding on New Jersey courts, the *Crescent* case does nicely illustrate how the economic loss rule, which is applicable in New Jersey, prevents parties from disguising breach of contract claims as a negligence or tort claim in order to recover purely economic losses. Instead, the parties are left to their contractual remedies to recover their damages.

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Each issue’s Legal Construction Column will discuss a recent decision by New Jersey courts or, like here, courts from other states which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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