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CONTRACTORS VS. DESIGNERS—CLAIMS ALIVE IN NORTH CAROLINA

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By Pete Marino, Andrew Atkins, Casey Vaughn and Pat Wilson

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North Carolina Courts have held for decades that general contractors can assert negligence claims directly against design professionals in the absence of a contractual relationship between the contractor and the design professional. In *Wright Construction Services, Inc. v. Hard Art Studio, PLLC*,^[1] the North Carolina Court of Appeals reaffirmed this principle and addressed whether the "license defense" applies to these claims. The "license defense" is a common law doctrine that primarily provides that contractors are barred from bringing claims for payment for work performed and enforcing the contract against the owner in the event the contractor was unlicensed at the time it contracted for a project or during a period of time in which it becomes unlicensed after execution of the contract. In *Wright Construction Services*, the Court found that the license defense did not apply, and that the general contractor could bring its negligence claims against the designers despite being unlicensed at the time it entered into the construction contract.

In arriving at its conclusion, the Court cited the purpose of the license doctrine, which is to protect the *public* from suspect construction work completed by unlicensed contractors, not to protect construction designers. The Court further noted the narrow application of the license defense and its inapplicability to claims other than those to enforce the contract against the owner.

The *Wright* decision reaffirms the narrow application of the license defense and declines to extend the availability of the defense to parties other than the owner. It highlights that a party other than the owner will not be able to use this defense to avoid liability for its own negligent conduct. Nonetheless, general contractors should carefully monitor its compliance with licensing requirements to ensure the full array of legal remedies is available to it.

[1] In *Wright Constr. Servs., Inc. v. Hard Art Studio, PLLC*, No. COA19-1089, 2020 WL 7906704, at *1 (N.C. Ct. App. Dec. 31, 2020).

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PROFESSIONALS

Andrew P. Atkins

Peter J. Marino

William "Casey" Vaughn

Patrick D. Wilson

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