Georgia State University College of Law
Reading Room

Georgia Business Court Opinions | College of Law

7-21-2009

Order on Fireman's Find Insurance Company's Motion for Partial Summary Judgment (GEORGIA STATE FINANCING AND INVESTMENT COMMISSION)

Elizabeth E. Long
Superior Court of Fulton County

Follow this and additional works at: http://readingroom.law.gsu.edu/businesscourt

Recommended Citation
Long, Elizabeth E., "Order on Fireman's Find Insurance Company's Motion for Partial Summary Judgment (GEORGIA STATE FINANCING AND INVESTMENT COMMISSION)" (2009). *Georgia Business Court Opinions*. Paper 122.
http://readingroom.law.gsu.edu/businesscourt/122

This Court Order is brought to you for free and open access by the College of Law at Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact dschander@gsu.edu.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

GEORGIA STATE FINANCING AND INVESTMENT COMMISSION,

Plaintiff,

v.

LPS CONSTRUCTION CO., INC., WALLACE H. WIGGINS, JR., PERKINS & WILL, INC., FIREMAN'S FUND INSURANCE CO., and XL SPECIALTY INSURANCE CO.

Defendants,

and

LPS Construction Co., Inc.
Third Party Plaintiff

v.

ZURICH AMERICAN INSURANCE CO. and NATIONAL FIRE INSURANCE COMPANY OF HARTFORD

Third-Party Defendants,

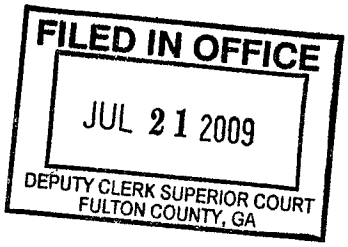
and

LPS CONSTRUCTION CO., INC., FIREMAN'S FUND INSURANCE COMPANY. and
PERKINS & WILL, INC.,
Third-Party Plaintiffs

v.

SOUTHWESTERN COMMUNICATIONS, INC., SOUTHEAST ROOFING SOLUTIONS, INC., MOCK PLUMBING AND MECHANICAL, INC., H. A. SACK CO., INC. d/b/a THE SACK COMPANY, BONITZ OF GEORGIA, INC., RIGHTWAY DRYWALL, INC., OLD CAPITOL GLASS COMPANY, INC., MAY SPECIALTY FABRICATORS, INC., LARRY GUNN, CHARLIE JOHNSON, CENTRAL FENCE COMPANY, INC., SPRINKLER CONTRACTORS, INC.,

CIVIL ACTION FILE NO.
2007CV128025



and H. A. SACK CO., INC. d/b/a THE SACK COMPANY

Third-Party Defendants,

and

SOUTH WESTERN COMMUNICATIONS, INC.,

Fourth-Party Plaintiff,

v.

SIMPLEXGRINNELL, LP, f/k/a SIMPLEX TIME RECORDER CO.,

Fourth-Party Defendant

and

H. A. SACK CO., INC. d/b/a THE SACK COMPANY

Fourth-Party Plaintiff,

v.

CONTINENTAL LIGHTNING PROTECTION, INC. AND TERRY L. DAGENHART

Fourth-Party Defendants.

ORDER ON FIREMAN'S FUND INSURANCE COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT

On July 10, 2009, Counsel appeared before this Court to present oral argument on Defendant/Third-Party Plaintiff Fireman's Fund Insurance Company's Motion for Partial Summary Judgment. After hearing the arguments made by counsel and reviewing the briefs submitted on the motions and the record in the case, the Court finds as follows:

I. Facts

This case arises out of the construction of a 192-bed state forensics hospital in Milledgeville, Georgia ("the Project"). The Project was designed for the Georgia Department of Human Resources to be used to house detainees awaiting adjudication as to their competence to stand trial. Plaintiff, Georgia State Financing and Investment Commission ("GSFIC"), is the State agency that procures projects for use by other State agencies. Defendant LPS Construction Company, Inc. ("LPS") was hired by GSFIC to construct the Project, and served as the general contractor. Fireman's Fund Insurance Company ("Fireman's Fund") is the performance bond surety for LPS. Defendant Perkins & Will ("P&W") was hired by GSFIC as the Project architect, and was in charge of contract administration.

GSFIC has filed suit against LPS, Fireman's Fund, and additional Defendants complaining of extensive construction defects throughout the Project. In turn, LPS and Fireman's Fund have filed third-party complaints against all of LPS's subcontractors on the Project.

II. Standard

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

III. Fireman's Fund's Motion for Partial Summary Judgment

Fireman's Fund is the performance bond surety for LPS. Fireman's Fund has filed third-party complaints against LPS's subcontractors asserting subrogation, breach of contract, indemnification and contribution claims. Fireman's Fund has moved for partial summary

judgment arguing that if a subcontractor is entitled to summary judgment because there is no evidence of its defective work, then Fireman's Fund is entitled to summary judgment to the extent of GSFIC's claims arising out of that work.

Fireman's Fund's liability to GSFIC arises from the performance bond, which is entirely separate and independent from LPS's contracts with its subcontractors. If LPS's work or its subcontractors' work is found to be defective, Fireman's Fund may be liable on its performance bond. On the other hand, if there is no evidence of defective work by any particular subcontractor, Fireman's Fund may still be liable on the performance bond based on the liability of LPS. The Motion for Partial Summary Judgment is hereby **DENIED.**

SO ORDERED this 21st day of July, 2009.

ELIZABETH E. LONG, SENIOR JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

Copies to:

Georgia State Financing and Investment Commission George C. Reid, Esq. georgereid@mindspring.com Building One—Suite 200 4200 Northside Parkway Atlanta, GA 303027 Teri D. Fields, Esq. tfields@law.ga.gov Assistant Attorney General State Law Department 40 Capital Square, S.W. Atlanta, GA 30334 David R. Cook, Jr., Esq. cook@ahclaw.com Autry,Horton & Cole, LLP 2100 East Exchange Place Suite 210 Tucker, GA 30084 404.365.5694 ext. 3335	**LPS Construction Co., Inc.,** John C. McManus, Esq. jcm@jcmpc.com George Warlick, Esq. g.warlick@jcmpc.com Alex Yusupov, Esq. alex@jcmpc.com McManus & Warlick, LLP 5901-A Peachtree Dunwoody Road Suite 510 Atlanta, GA 303028 678.397.1010 **Wallace H. Wiggins, Jr.,** John C. McManus, Esq. jcm@jcmpc.com George Warlick, Esq. g.warlick@jcmpc.com Alex Yusupov, Esq. alex@jcmpc.com McManus & Warlick, LLP 5901-A Peachtree Dunwoody Road Suite 510 Atlanta, GA 303028 678.397.1010 **Perkins & Will, Inc.,** William Wildman, Esq. bill.wildman@sablaw.com Kent W. Collier, Esq. kent.collier@sablaw.com Sutherland 999 Peachtree Street, NE Atlanta, GA 30309-3996 **American Motorists Insurance Co.,** **Fireman's Fund Insurance Co.,** John V. Burch, Esq. jvb@boviskyle.com Marc H. Bardack, Esq. mhb@boviskyle.com Bovis, Kyle & Burch, LLC 200 Ashford Center North

	Suite 500 Atlanta, GA 30338 **XL Specialty Insurance Co.,** DeWitte Thompson, Esq. dthompson@tshlawyers.com Robert Steinberg, Esq. rsteinberg@tshlawyers.com Thompson Slagle & Hannan, LLC 1200 Findley Road, Suite 250 Duluth, GA 30097-1411 **Southwestern Communications Inc.** (Third Party Defendant to Complaint filed by Third Party Plaintiff Perkins & Will, Inc., and Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) G. Lee Welborn, Esq. welborn@downeycleveland.com Downey & Cleveland 288 Washington Avenue Marietta, Georgia 30060 **Southeast Roofing Solutions** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Michael J. Classens, Esq. michael@ecbcpc.com Edenfield, Cox, Bruce & Classens, P.C. 115 Savannah Avenue Statesboro, GA 30459 **Mock Plumbing and Mechanical Inc.,** Edward H. Lindsey Jr., Esq. elindsey@gmlj.com David M. Abercrombie, Esq. dabercrombie@gmlj.com Goodman McGuffey Lindsey & Johnson, LLP 3340 Peachtree Road, NE Suite 2100 Atlanta, GA 30326 **H.A. Sack Co., Inc.** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund

	Ins. Co. & LPS Construction Co., Inc.) Ronald J. Garber, Esq. rgarber@shapirofussell.com Shapiro, Russell, Wedge & Martin, LLP One Midtown Plaza, Suite 1200 1360 Peachtree Street, NE Atlanta, GA 30309-3214 Kenneth Sisco, Esq. ksisco@hplegal.com Hawkins & Parnell LLP 3030 Peachtree Street, NE 400 SunTrust Plaza Atlanta, GA 30308 **Bonitz of Georgia, Inc.** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Alan S. Lowe, Esq. alowe@savlawgroup.com Ellen Schoolar, Esq. ellen@savlawgroup.com Alan S. Lowe & Associates P.C. 311 W. Broughton Street Savannah, GA 31401 **Rightway Drywall, Inc.** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) James T. Budd jbudd@m-mlegal.com Mabry & McClelland, LLP 2200 Century Parkway Tenth Floor Atlanta, GA 30345 **Old Capitol Glass Company, Inc**. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Stacey K. Hydrick, Esq. Hydrick Law LLC 2408 Mt. Vernon Road

	Atlanta, Georgia 30338 **May Specialty Fabricators, Inc**. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Jerald R. Hanks, Esq. jrhanks@hanksbrookes.com Hanks & Brookes, LLC The Peachtree 1355 Peachtree Street, NE Suite 1900 Atlanta, GA 30309 **Larry Gunn,** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) P.O. Box 54 Nunex, GA 30448 **Charlie Johnson** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) 213 Forest Avenue Soperton, GA 30457 **Central Fence Co., Inc.** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Kirk Susong, Esq. ksusong@gadisputes.com Robert P. Marcovitch, Esq. bmarcovitch@gadisputes.com Gaslowitz Frankel, LLC 4500 SunTrust Plaza 3030 Peachtree Street, NE Atlanta, GA 30308-3243 **Sprinkler Contractors, Inc.** (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Melinda Moseley Melinda.moseley@nelsonmullins.com Nelson Mullins Riley & Scarborough, LLP

	201 17th Street, N.W. Suite 1700 Atlanta, GA 30363 Thyssenkrupp Elevator Corp. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.) Terry L. Dagenhard 19412 Makayla Lane Cornelius NC 28031-6533 Paul Crabtree Continental Lightning Protection, Inc. 2912 Millwood Lane, NW Lilburn, GA 30047 **Zurich American Ins. Co.** (Fourth Party Defendant) Frederick W. Stearns, Esq. fred.stearns@swiftcurrie.com Swift Currie McGhee & Hiers LLP 1355 Peachtree Street NE Suite 300 Atlanta, GA 30309-3238 **National Fire Insurance Company of Hartford f/k/a Transcontinental Ins. Co., Continental Casualty Ins. Co., and Valley Forge Ins. Co.** Michael J. Athans, Esq. mathans@fieldshowells.com Matthew A. Barrett, Esq. mbarrett@fieldshowell.com Fields Howell, Athans & Mclaughlin LLP 191 Peachtree Street, NE Suite 4600 Atlanta, GA 30303-1740 **Simplex Grinnell LP** (Fourth Party Defendants) Raymond L. Deluca, Esq. Wendy F. Klein Keane, Esq. kleinkew@pepperlaw.com Pepper Hamilton LLP

	3000 Two Logan Square Eighteenth & Arch Streets Philadelphia, PA 19103 C. Bradford Marsh, Esq. bradford.marsh@swiftcurrie.com Swift, Currie, McGhee & Hiers LLP 1355 Peachtree Street NE Suite 300 Atlanta, GA 30309