

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*

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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,**

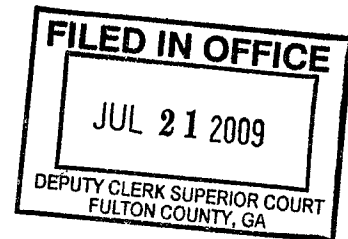
and

**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**

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