

Legal Decisions Affecting Design Professionals

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DIFFERENT WORKS



LEE/SHOEMAKER

RLI Design Professionals
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Course Description



27th Annual Case Review of Legal Decisions Affecting Architects and Engineers

Learning Objectives

Participants in this session will:

- 1** Participants will review a case involving arbitration and evaluate how a flow-down provision in a contract can impact the dispute resolution process;
- 2** Participants will examine the formation of contracts and evaluate how external documents and other specific provisions can impact the understanding and application of the contract;
- 3** Participants will review statute of limitations and statute of repose issues to alleviate potential legal issues in the future; and
- 4** Participants will review how limitation of liability language can impact the outcome of a case and analyze how contract terms can apply to various situations.

Presenter



DUTY

Parker Venture, LLC v.
Chancey Design P'ship,
2021 U.S. Dist. LEXIS 44840
(M.D. Ala. Mar. 10, 2021)

Duty



Duty

Structural engineer owed no duty to party who purchased a property after the original work was completed.

Duty

LESSON LEARNED: There is no duty to those who will not foreseeably rely on design work. Does your contract explicitly limit duties to the named owner?

ARBITRATION

Obermiller Nelson Eng'g, Inc. v.
River Towers Ass'n,
2021 U.S. Dist. LEXIS 157839
(D. Minn. Aug. 20, 2021)

Arbitration



Arbitration

The Trial Court orders arbitration where Engineer was obliged to participate despite not being a signatory to the prime contract.

Arbitration

LESSON LEARNED: A flow-down provision will likely be enforced, including the dispute resolution provisions in the upstream contract. Whether an arbitration clause will be enforced usually will be decided by the arbitrator (who has a strong interest in maintaining jurisdiction) unless there is clear contractual language to the contrary.

CONTRACT FORMATION

Contract Formation

Brass Reminders
Co. v.
RT Eng'g Corp.,
844 F. App'x 813
(6th Cir. 2021)

Contract Formation



Contract Formation

Grant of summary judgment in favor of Engineer affirmed on appeal because Owner failed to meet requirements set forth in terms and conditions referenced in hyperlink embedded in the parties' contract.

Contract Formation

LESSONS LEARNED: Parts of an agreed contract will be binding, even if a full understanding of it requires a party to refer to an external document. What provisions are referenced in your contract, but not attached to it? AIA Standard Documents? Standing procurement regulations? Owner-prime requirements?

COPYRIGHT

Copyright

Cisneros Design v.
Bd. Of Cty. Comm'rs of Santa Fe,
2021 U.S. Dist. LEXIS 94707
(D.N.M. May 19, 2021)

Copyright

SANTA FE COUNTY



Proposed Design



Final Design

SANTA FE COUNTY

Copyright

The trial court found that the county logo did not violate copyright law because it did not copy protectible elements nor was it substantially similar to the original.

Copyright

LESSON LEARNED: Copying ideas alone is not a copyright violation. Violations are determined by what is being copied.

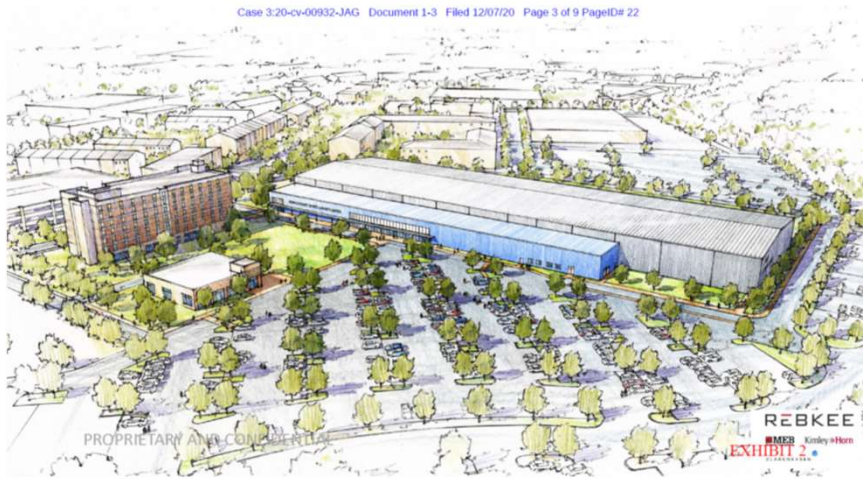
TORTIOUS INTERFERENCE

Tortious Interference

Clark Nexsen v. Rebkee Co.,
2021 U.S. Dist. LEXIS 67013
(E.D. Va. Apr. 6, 2021)

Tortious Interference

Case 3:20-cv-00932-JAG Document 1-9 Filed 12/07/20 Page 6 of 7 PageID# 57



Exterior View 2

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aria
GROUP

EXHIBIT 8

Tortious Interference

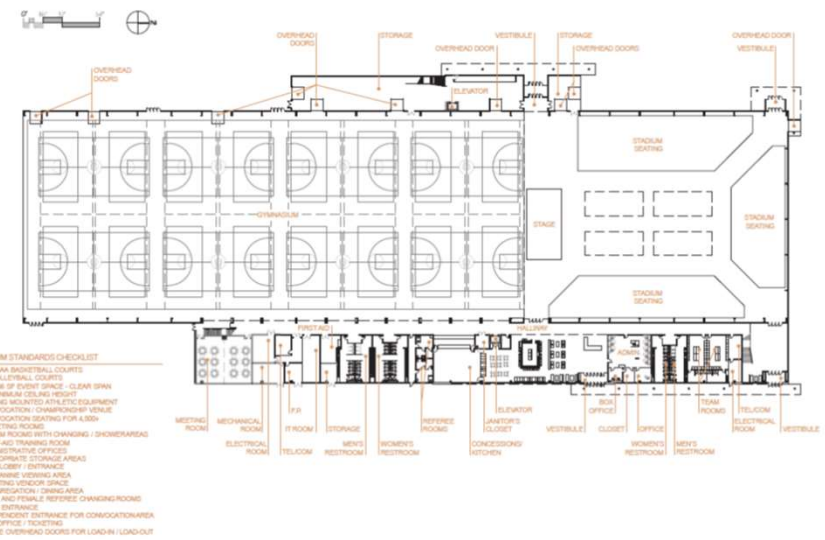
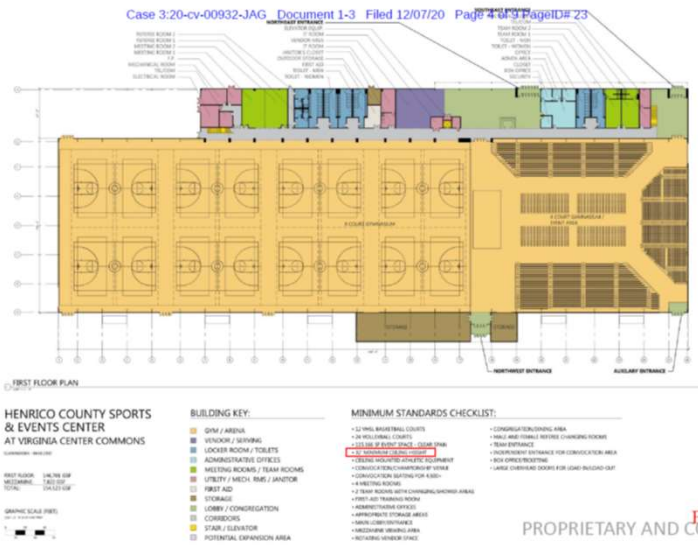


EXHIBIT 2
PROPRIETARY AND CONFIDENTIAL

Floor Plan - Lower Level (Alt. Event Plan)

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EXHIBIT 8

Tortious Interference

Developer's motion to dismiss is granted because Design-Builder failed to show that a relationship with business expectancy existed with Owner or, subsequently, that Developer interfered with it.

Tortious Interference

LESSONS LEARNED: Don't expect remedies outside what your contract provides if your client fails to pay you for your work.

FAIR HOUSING ACT

Fair Housing Act

**Fair Hous. Justice Ctr. Inc. v.
Lighthouse Living LLC,
2021 U.S. Dist. LEXIS 181505
(S.D.N.Y. Sep. 20, 2021)**

Fair Housing Act



Fair Housing Act

Trial court denied motion to dismiss of Architect based on the continuing violation doctrine.

Fair Housing Act

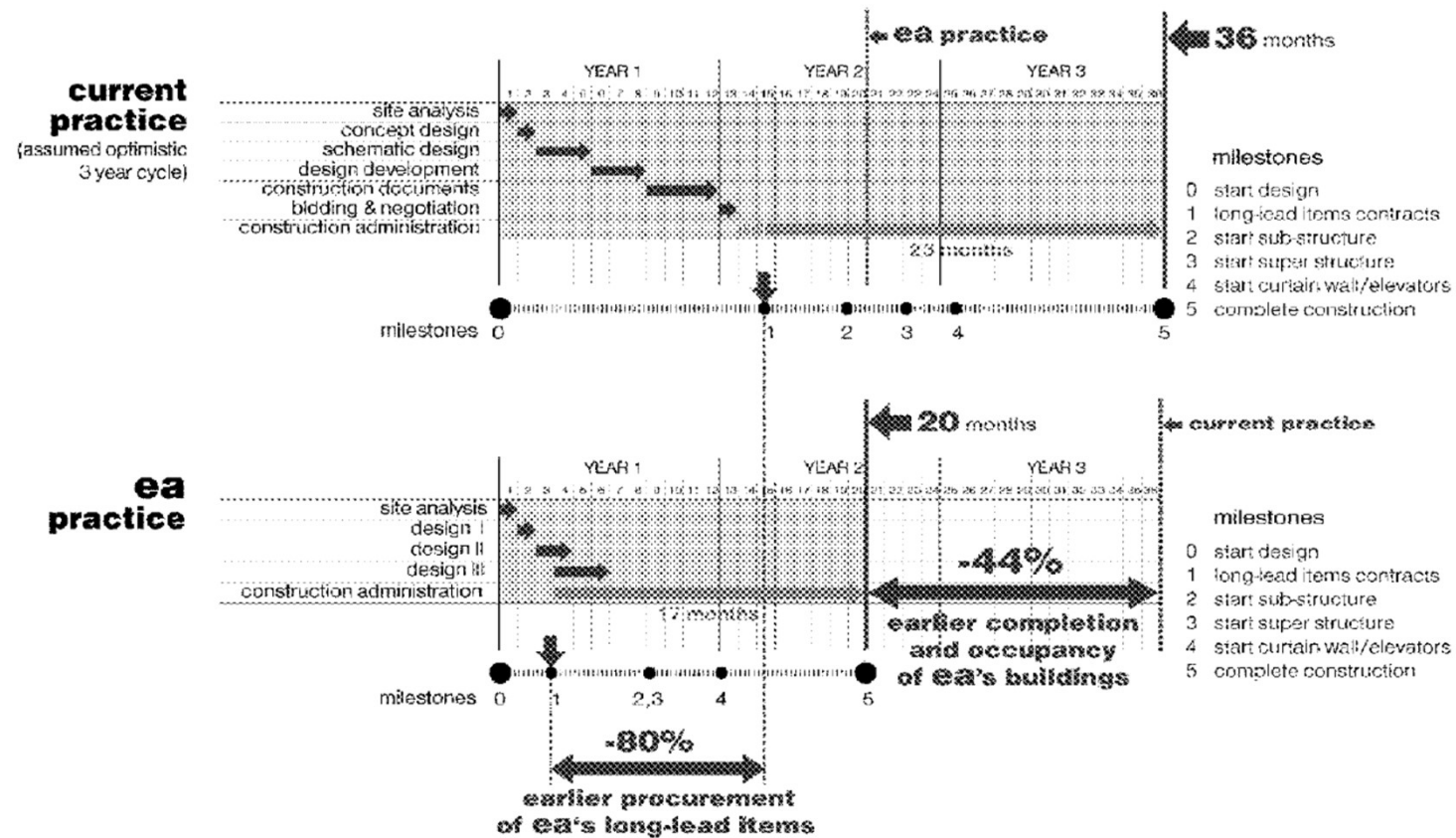
LESSON LEARNED: Claims asserted under the Fair Housing Act are imposed broadly, and any exceptions that would justify dismissing such claims are applied narrowly.

TRADE SECRETS

Trade Secrets

Attia v. Google LLC,
983 F.3d 420
(9th Cir. 2020)

Trade Secrets



Trade Secrets

Disclosure of trade secrets as part of a patent application prevented a later claim for misappropriation of those secrets.

Trade Secrets

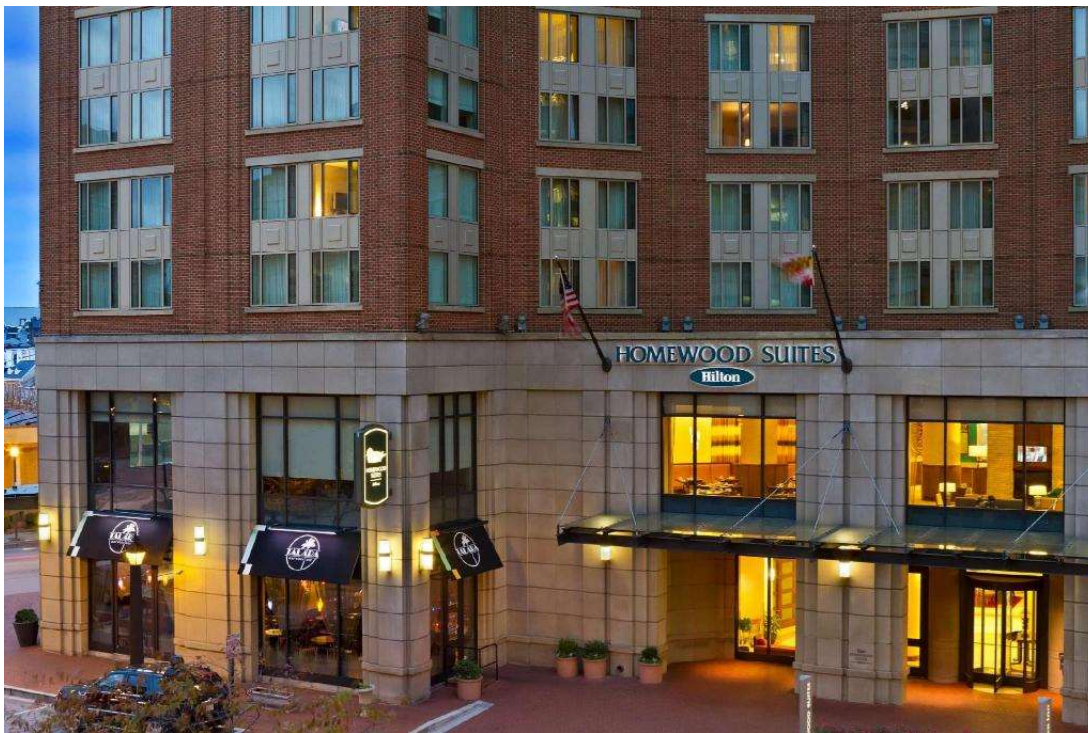
LESSON LEARNED: It is important to be careful in choosing what, when, and how to disclose any trade secrets.

STATUTE OF LIMITATIONS

Statute of Limitations

Star Mgmt. Grp., LLC v.
Robert Greenberg, P.A.,
2021 Md. App. LEXIS 336
(Md. Ct. Spec. App. Apr. 20, 2021)

Statute of Limitations



ARBITRATION OPINION AND AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN

DENIED

UNIVERSITY HEALTH PROFESSIONALS, LOCAL 3837

Case No. 01-20-0005-5714

Grievance: Failure to pay double time during a pandemic

Statute of Limitations

Architect's petition to stay arbitration is granted because Owner's arbitration demand was not filed within three years of the date of Substantial Completion, as required by the contract.

Statute of Limitations

LESSONS LEARNED: Defining “accrual” by contract provides greater certainty regarding the last date a party can file suit. Courts will enforce language that broadly includes claims of all types.

STATUTE OF REPOSE

Statute of Repose

Dekker/Perich/Sabatini Ltd. v.
Eighth Judicial Dist. Court,
495 P.3d 519 (Nev. 2021)

Statute of Repose



Statute of Repose

State Supreme Court allows case to proceed based on amended statute of repose that was enacted after the complaint was filed based on legislative purpose.

Statute of Repose

LESSON LEARNED: Legislatures can give – and take away – defenses available to design professionals. Contract-based time limitations are available as an alternative. What do AIA documents say about repose, if anything?

LIMITATIONS OF LIABILITY

Limitations of Liability

Turtle Factory Bldg. Corp. v.
ECS SE, LLP,
2021 U.S. Dist. LEXIS 128281
(D.S.C. July 9, 2021)

Limitations of Liability



Limitations of Liability

Property Owner was bound by a liability limitation in a contract signed by its agent.

Limitations of Liability

LESSON LEARNED: Design professionals dealing with multiple entities must ensure that their contract terms apply to any person who might have a contract claim against them.

Concluding Remarks

Thank you for your time!

QUESTIONS?

This concludes The American Institute of Architects
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