

# PUBLICATION

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## Texas Supreme Court Reinforces that Subcontractors May be Liable to Property Owners

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**September 08, 2014**

On August 22, 2014, the Texas Supreme Court ruled that both the trial court and the court of appeals improperly dismissed a property owner's claim for negligence against a subcontractor for improper plumbing installation in *Chapman Custom Homes, Inc. v. Dallas Plumbing Company*. The Court reiterated that a subcontractor has an implied duty to perform with both care and skill and that breach of this duty may result in liability to property owners. The Court's ruling in this case makes it clear that a subcontractor may be directly liable to a property owner even when the property owner and subcontractor do not have a contractual relationship.

### What happened in *Chapman Custom Homes v. Dallas Plumbing Company*?

In *Chapman*, Chapman Custom Homes was hired as a general contractor to build a home in Frisco, Texas. Chapman hired Dallas Plumbing Company to install the plumbing in the new house. The plumbing was allegedly installed improperly, and leaks from the plumbing significantly damaged the structure. The property owner sued Dallas Plumbing alleging breach of contract, breach of warranty, and negligence.

The trial court granted summary judgment for Dallas Plumbing because the property owner did not have a contract with Dallas Plumbing. Additionally, the trial court found the property owner did not allege a violation of a duty owed to it by Dallas Plumbing, independent of the contract.

Looking to a case from 1947, the Texas Supreme Court reversed the decision of the court of appeals. The Court found that, even though Dallas Plumbing and the property owner did not have a contractual relationship, Dallas Plumbing still had a duty to perform the contract with both care and skill. Therefore, the property owner's suit alleging that Dallas Plumbing had performed work negligently was sufficient to raise an implied duty by Dallas Plumbing to perform its work with care and skill.

The Court further rejected Dallas Plumbing's argument that the property owner was barred from recovery under the economic loss rule. The economic loss rule states that a party may not recover damages for failure to perform under a contract when the only damages are losing what the party expected to receive under the terms of the contract. The Court specifically noted that, when the tort duty is independent of the contract itself, the economic loss rule will not preclude recovery. In this case, the Court found that Dallas Plumbing had an independent duty to perform with care and skill. Because this duty was independent of the contract between Dallas Plumbing and Chapman Custom Homes, the economic loss rule did not preclude recovery.

### Why is this important?

There are a number of cases that state a subcontractor cannot be sued by a property owner for defective work because the property owner does not have a contract with the subcontractor, only with the general contractor. This case makes it clear that, while a property owner may not have a contract suit against a subcontractor with whom they do not have a contract, they may have a negligence claim. Importantly, this potential liability is independent of any contract with the subcontractor.

This case also reinforces an independent legal duty that subcontractors have to property owners when they are conducting work. At all times, they must perform the work with both care and skill. Failing to perform a contract with both care and skill may result in liability to the property owner in addition to potential contract liability to the general contractor.

Finally, because this duty and potential liability is independent of the contract between the subcontractor and general contractor, a subcontractor will not be able to escape liability under the economic loss rule. If a subcontractor breaches its duty to perform with care and skill, it will be liable for all damages caused by the breach.

Should you have any questions about possible subcontractor liability or other construction law issues in general, please contact Brad Chambers or a member of the Firm's Construction Group.