

COLORADO SUPREME COURT UPHOLDS HOMEOWNER RIGHTS

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The “Economic Loss Rule” does not prevent homeowners and homeowner associations from bringing construction defect claims directly against the subcontractors responsible for the defective work, the Colorado Supreme Court has ruled. In *A.C. Excavating v. Yacht Club II Homeowners Ass’n*, an association alleged that various subcontractors were liable for the cost of fixing leaking windows and roofs, poor drainage, and other examples of negligent workmanship in a Westminster community. The trial court found that the Economic Loss Rule barred the association’s claims and dismissed the case, but the Supreme Court reinstated the suit, concluding that the Economic Loss Rule is inapplicable.

The Economic Loss Rule, first adopted by the Supreme Court in 2000, serves to hold contracting parties to the terms of their bargain. The rule bars the assertion of negligence or other tort claims where a plaintiff has suffered only economic losses from the breach of an express or implied contractual duty. Tort law, the court has explained, is designed to protect citizens from the risk of physical harm to their persons or to their property, and it affords relief where a defendant has breached a duty of care imposed by law. By contrast, if a defendant’s duty is imposed by contract, then a plaintiff is limited to the remedies provided in that contract.

The question thus before the court in *Yacht Club* was whether a subcontractor has an independent duty to exercise reasonable care in building a home, or whether a subcontractor’s duties are fully defined in his contract with the developer. The court ruled that subcontractors do have an independent duty of care where someone’s home is at risk, and the Economic Loss Rule therefore does not shield a subcontractor from liability to the homeowner for negligent work.

The court observed that this has been the law in Colorado since at least 1978, when the court of appeals allowed a homeowner to recover damages from a plumbing subcontractor who had installed a defective sump pump system in her house. Subsequent rulings have consistently recognized that builders are in a far better position to determine the condition of a house than most buyers who, despite having neither construction expertise nor access to many structural components of the house, are often making the biggest investment of their lives. In *Yacht Club*, the court clarified that its adoption of the Economic Loss Rule in 2000 did not conflict with this precedent, because homebuilders retain a duty to avoid negligence which is independent of their contracts. The court noted that its continuing recognition of this duty is supported by recent legislation which limits certain construction defect remedies while still preserving a homeowner’s basic right to recover for property damage and life-safety hazards. Thus, while the Economic Loss Rule may prevent construction professionals from suing each other for the negligent performance of a contract, it does not insulate these professionals’ from liability to the homeowner for negligence.

Although legal practitioners disagree about the probable long-term effects of the *Yacht Club* decision, the case stands as an important victory for homeowners throughout Colorado. Construction professionals have an overriding duty to avoid negligence, and *Yacht Club* makes clear that a construction contract is not a license to damage someone’s home. If a builder’s negligent acts damage someone’s home, he will be held accountable.

Jesse Howard Witt is a partner in the Golden law firm of Benson & Associates PC. Mr. Witt has represented homeowner associations, individual homeowners, and homeowner advocacy groups in numerous cases before the Colorado trial and appellate courts, and he co-authored an amicus curiae brief in the Yacht Club case. Please send comments or questions to jhwitt@bensonpc.com.