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## ARCHITEX ASS'N, INC. v. SCOTTSDALE INS. CO.

NO. 2008-CA-01353-SCT.

27 So.3d 1148 (2010)

**ARCHITEX ASSOCIATION, INC. ("Architex")**

v.

**SCOTTSDALE INSURANCE COMPANY ("Scottsdale").**

Supreme Court of Mississippi.

February 11, 2010.

*Dorsey R. Carson, Jr., Cheri Turnage Gatlin, John Martin Lassiter, Bradley Barron Vance, Eric Foster Hatten, Jackson, attorneys for appellant.*

*James W. Shelson, James W. Craig, Justin L. Matheny, Jackson, attorneys for appellee.*

*Before WALLER, C.J., RANDOLPH and CHANDLER, JJ.*

RANDOLPH, Justice, for the Court.

¶ 1. The parties and amici<sup>1</sup> assert the matter before this Court is a case of first impression. This Court is called upon to determine whether Architex Association, Inc.'s ("Architex") intentional hiring or utilization of subcontractors to perform work on one of its projects negates coverage included in the Commercial General Liability ("CGL") coverage part of three separate "Commercial Lines" policies issued by Scottsdale Insurance Company ("Scottsdale") to Architex. Scottsdale prevailed on its "Motion for Summary Judgment" after the Circuit Court of Rankin County, Mississippi, held that no coverage exists. Architex, a general contractor, appeals that ruling.

### FACTS

¶ 2. On April 14, 2000, Architex entered into a contract with Vikram Parshotam and CIS Pearl, Inc. ("CIS") to construct a Country Inn and Suites hotel ("Inn"). On July 25, 2000, a performance bond with The Hanover Insurance Company ("Hanover"), as surety, and Architex, as principal, was issued for \$1.89 million pertaining to work to be performed on the Inn. Architex used multiple subcontractors to build the Inn.

¶ 3. On June 21, 2002, a "Statutory Notice of Construction Lien" was filed by Architex "for construction balance due on Country Inn & Suites ... of \$256,075." Architex had yet to file suit. On July 31, 2002, CIS filed suit against Architex and Hanover. The suit alleged that Architex had breached its contract; "was negligent in the construction of the [Inn] and such negligence is the sole proximate cause or a proximate contributing cause of injuries to [CIS]"; and that the construction lien claimed by Architex constituted slander of title. Regarding breach of contract, CIS's complaint provided that Architex:

abandon[ed] the [Inn], refus[ed] to complete the work, perform[ed] work which was contrary to the contract plans and specifications and contrary to applicable codes and building standards, and ... fail[ed] to correct or remedy defective work. Architex has also failed to reimburse [CIS] for monies expended for the [Inn] which were to be paid by Architex.

As to Hanover, CIS asserted a "performance bond claim," stating that Hanover "has not corrected Architex's non-conforming, incomplete and defective work on the [Inn]." Architex considered the suit as a mere fee dispute, and did not notify Scottsdale of the suit or otherwise file a claim.

¶ 4. It was not until September 2004 that counsel for CIS communicated to Architex an allegation that testing had revealed serious rebar deficiencies in the foundation of the Inn, *inter alia*. On October 5, 2004, Architex first notified Scottsdale of that claim. The notice of claim alleged that the "date of occurrence" was September 30, 2004, and described the purported "occurrence," as follows:

[CIS] filed accusations of faulty work against [Architex] claiming that no rebar was placed in foundation and building is total loss. [Architex] denies this allegation and building is sound.... This accusation was just made by [CIS]. [Architex] has been involved in legal action against [CIS] for failure to pay monies owed on this building.... Please contact [Architex's] attorney to coordinate defense. [Inn] was built during policy term.

Victor Hamby, the chief financial officer of Architex, testified that notice of the rebar claim "trigger[ed] an [ ] occurrence[ ]" under the policy."

15 On October 6, 2004, Scottsdale sent a letter to Hamby confirming receipt of the notice of claim. The letter added that Scottsdale had yet to receive a copy of CIS's complaint, noted policy exclusions and definitions, and concluded that Scottsdale "is reserving the right to assert all defenses to coverage under

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