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The Washington Supreme Court Abandons the Completion and Acceptance Doctrine

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Summer 2007

This article originally appeared in *Construction Law*, Vol. 36, No. 1 (WSBA Summer 2007)

For nearly a century, Washington contractors have been secure in the knowledge that they were generally insulated from tort liability to third parties once the project was completed and accepted by the owner. Not anymore, because the Washington Supreme Court abandoned the completion and acceptance doctrine in *Davis v. Baugh Industrial Contractors, Inc.*¹

Baugh was the general contractor on a project to build a network of underground pipes. Some three years after completion, the owner suspected a leak in one of the underground pipes. Alan Davis was sent to lead an excavation crew and find the leak. While Davis was in the excavated hole, a wall collapsed and he was pinned under a massive cement block. Davis died from his injuries, and his estate sued Baugh (among others) for negligence.

The trial court dismissed Davis' suit based on the completion and acceptance doctrine. On direct appeal, the Washington Supreme Court reversed. As part of doing so, the Supreme Court reviewed

and ultimately abandoned the completion and acceptance doctrine.

Briefly stated, the contours of the completion and acceptance doctrine are as follows: as long as a contractor finishes work in compliance with plans and specification and that work is accepted by the owner after inspection, the contractor is not liable for injuries to third parties. That risk belongs to the owner. By the time *Davis* was decided, that had been the law in Washington for close to a century.

However, the law is trending against the completion and acceptance doctrine. *Davis* notes that 37 states have rejected it. The Washington Supreme Court decided it was time for this state to do the same.

Davis listed a number of reasons for abandoning the completion and acceptance doctrine. First, the court considered the doctrine "outmoded, incorrect, and harmful". Labeling it as "ancient", the court found that "it does not accord with currently accepted principles of liability". The

doctrine was based on a privity rule, under which a builder (or seller) was liable to no-one but the purchaser. That privity rule was "long abandoned".

Second, Washington law has changed as to the concept of intervening cause. The completion and acceptance doctrine is based in part in the notion that an owner's failure to remedy a dangerous condition was an intervening cause that cut off the contractor's liability. That rationale is no longer valid, *Davis* noted, "because Washington has long since abandoned this theory of proximate cause, sometimes called the 'last wrongdoer' rule."

A third reason *Davis* abandoned the completion and acceptance doctrine was the increasing complexity of construction. The court noted that "construction has become highly scientific and complex." Modern elements such as composites and laminates have replaced traditional elements like wood and steel. As a result, the court reasoned, owners are "often incapable of recognizing substandard performance." According to *Davis*, this defeats

one of the traditional bases for the completion and acceptance doctrine; that owners accept dangers in the work if they accept it after inspecting it.

A fourth reason was the statute of repose. *Davis* presented this as "a much clearer and simpler way to protect contractors" than the completion and acceptance doctrine.

That ties into *Davis*' fifth reason; that the completion and acceptance doctrine is harmful. *Davis* saw two kinds of harm. First, the court considered the doctrine "unnecessarily complex and difficult for courts to apply". *Davis* described the doctrine as "nearly subsumed by the many exceptions which are necessary to avoid inequitable results." Second, *Davis* felt the doctrine "weakens the deterrent effect of tort law on negligent builders. By insulating contractors from liability, the completion and acceptance doctrine increases the public's exposure to injuries caused by

negligent design and construction".

For all of these reasons, the Washington Supreme Court abandoned the century-old completion and acceptance doctrine in favor of the modern Restatement approach. Nowadays, Washington contractors are "liable for injury or damage to third persons as a result of negligent work, even after completion and acceptance of that work, when it was reasonably foreseeable that a third person would be injured due to that negligence."

Two issues, at least, are worth noting about this decision. First, it is a bit unclear but it appears that a contractor may face liability to third parties even if they built in accordance with the owner's plans and specifications. There was no indication that Baugh designed the pipelines or the wall that collapsed, or that the work failed to meet the design. Indeed, the majority opinion notes that "Baugh entered into a contract to

build a network of subterranean pipes". The dissent points out that the owner accepted Baugh's work after "inspection to assure the work ha[d] been performed as specified in the contract". Thus, building in accordance with the owner's plans and specifications may no longer be a defense for a contractor facing a third party's negligence claim.

Second, *Davis* seems to be based on the concept of negligent construction. The very first sentence of the opinion reads: "We are asked whether the common law doctrine of completion and acceptance ... bars this suit against Baugh Industrial Contractor's, Inc., for *negligent construction of a pipeline*." It will be interesting to see how future courts deal with this in light of the Supreme Court's earlier rejection of negligent construction in *Stuart v. Coldwell Banker Commercial Group*.

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Magnus R. Andersson's practice focuses on real estate, construction and banking. He has over 10 years' experience handling property transactions, financing, construction, and leasing matters. Magnus has also resolved numerous disputes on behalf of property owners, contractors, banks and other businesses over the years. Many of Magnus' clients are small to mid-sized companies based in the Puget Sound region of Washington State, but he also works with publicly-traded companies as well as individuals who own real estate.

¹ 159 Wn.2d 413, 150 P.3d 545 (2007).