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Corporate Protection and Negligence Claims in the Construction Industry

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Recently the North Carolina Court of Appeals in *White v. Collins Building, Inc. et al.*, addressed the issue of whether a homeowner has a negligence claim against its builder's principal when the builder was a corporation. The Plaintiffs Andrew and Barbara White ("Plaintiffs") purchased a beach home from developer, AEA & L, LLC. AEA & L, LLC had contracted with Defendant Collins Building, Inc. ("Corporation") to construct the residence. Defendant Edwin E. Collins, Jr. ("Collins") was the sole shareholder of Collins Building, Inc. and the qualifier for the Corporation's general contractor's license. Plaintiffs brought a series of claims against the Corporation, Collins, AEA & L, LLC and various subcontractors, but dismissed all claims except the negligence claim against Collins. Collins moved to dismiss the negligence claim against him on the ground that he could not be held individually responsible for the acts of the Corporation. The trial court agreed and allowed Collins' motion to dismiss, but the Court of Appeals reversed the decision and found in favor of the Plaintiffs.

The Court acknowledged that a properly formed and maintained business entity like a corporation or a limited liability company provides a shield of protection from personal liability for an individual member or officer, but the protection is not absolute. There are two ways to hold an individual corporate officer responsible for the actions of the corporate entity; either by piercing the corporate veil or by establishing direct negligence on the part of the individual member or officer. The latter avenue is the one that the Court of Appeals focused upon in this case.

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In support of its decision to extend liability to Collins individually, the Court of Appeals relied upon case law outside of the construction law context that had extended liability for negligence to corporate officers who actively participated in the negligent actions, even if those actions were performed on behalf of the corporation or in their capacity as officers. Because the Plaintiffs in this case alleged that Collins oversaw and personally supervised the day-to-day construction of the residence and that Collins failed to properly supervise specific building processes, the Court of Appeals held that a direct claim against Collins had, in the least, been established. The Court's opinion does not detail the evidence supporting the negligent supervision claim, likely because the case is still in its early stages, and the extent of the evidence will depend upon additional discovery. The case has been remanded to the trial court where the parties will engage in discovery to determine how much factual evidence supports the direct negligence theory against Collins.

The ultimate determination as to Collins' liability is uncertain, but the holding of the case is a lesson to builders to remember that the protections of a corporate entity will extend only so far. We have already seen this holding successfully argued in a lower court to support the addition of a new claim against a general contractor's qualifier and principal in a residential construction case expected to go to trial within the year. The case is also a good reminder for all corporations regardless of industry that liability may exist for a corporate officer's negligent actions regardless of the fact that the actions were taken in the course of a corporation's business.

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