

## ARCHITECTURAL LAW

In 1974, the Wisconsin Supreme Court held that an architect's contract with an owner did not require the architect to specify construction procedures or to supervise the work of the contractor. The court held "to hold otherwise would make the architect a general safety supervisor at the site, a job which would require his continuous presence in disregard of the express language of his contract." *Vonasek v. Hirsch & Stevens, Inc.*, 65 Wis. 2d 1, 221 N.W.2d 815 (1974). Recently the principle enunciated in the Vonasek case again came before the Wisconsin Supreme Court in *Baumeister v. Automated Products, Inc.*, 2004 WI 148, 690 N.W.2d 1 (2004). In the Baumeister case, an architect licensed in Wisconsin, was retained by Holy Trinity Lutheran Church to design its new church. The architect entered into an AIA Document B141 (1987 Ed.) contract with the owner. That contract contained the usual provisions requiring the architect to visit the site at intervals appropriate to the stage of construction in order to become familiar with the progress and quality of the work completed, but that the architect was not required to make exhaustive or continuous on-site inspections and would not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. While the owner had the option to extend the architect's services beyond the published contract terms, it did not do so.

The owner entered into a contract with a general contractor pursuant to AIA Documents A101 and A201 (1987 Ed.) which provided that the general contractor and its subcontractors must follow certain requirements relating to truss installation, i.e., (1) to comply with recommendations of the Truss Plate Institute for metal plate connected wood trusses and the State of Wisconsin Code requirements, and (2) install materials and systems in accordance with the manufacturer's instructions and approved submittals. The general contractor's subcontractor was to provide the fabricated wood trusses and another subcontractor was to install them. Two of the installing subcontractor's employees were seriously injured during the erection of the wood trusses. They claimed in an action subsequently brought that the architect was negligent in failing to supervise the installation of the trusses at the construction site. The trial court concluded as a matter of law that the subcontractor employees had failed to follow the TPI guidelines and that the architect had no duty to supervise the installation of the trusses, and as a result ordered a dismissal of the claims against the architect. The Court of Appeals affirmed the circuit court's decision and the Wisconsin Supreme Court agreed to review the case. The subcontractor employees seeking the Supreme Court review argued that the circuit court had failed to properly address the common law duty of the architect to avoid foreseeable injury to the subcontractor employees. Those employees argued that the architect breached its duty to avoid a foreseeable injury to the subcontractor employees by not giving those employees detailed instructions on truss bracing during construction, or provide some warning as to the dangers associated with the construction. They called an expert witness to rebut the architect's assertions that he did not breach his duty to design, approve or inspect the temporary bracing. The expert testified that the architect was responsible for providing truss bracing instructions.

The injured subcontractor employees also contended before the court that the architect had a legal duty which was breached to supervise truss installation. They argued that the architect's on-site observations were not sufficient to meet the obligations of the Wisconsin Administrative Code Section ILHR 50.07(2)(a) and 50.10 (September, 2000). Section ILHR 50.10 states, "All constructions or installations under §ILHR 50.07(2) and (3) shall be supervised by a Wisconsin registered architect or engineer...the person responsible for supervision shall also be responsible for the construction and installation being in substantial compliance with the approved plans and specifications." The Code defines "supervision of construction" in ILHR 50.10(1), as "reasonable on-the-site observations to determine that the construction is in substantial compliance with approved plans and specifications."

The injured employees argued that the architect's negligence should be a question left for the jury to decide upon.

The Wisconsin Supreme Court held that the architect had breached no contractual duty with regard to the installation of the truss bracing. It concluded after an inspection of the contract between the owner and the architect, and a review of the truss manufacturer's instructions that the argument of the injured subcontractor employees was not correct. The court concluded that under the AIA contract, the architect

was relieved of liability with regard to construction means or for safety precautions, and that he did not have any responsibility for nor did he control the techniques chosen by the contractor during construction, including the use of temporary bracing while erecting trusses. The Wisconsin Supreme Court also concluded that the architect was not responsible to the injured subcontractor employees simply because the truss manufacturer's instructions provided, "both temporary and permanent bracing are required and their design is the responsibility of the project architect or engineer." The Wisconsin Supreme Court held that the manufacturer could not impose a contractual duty on the architect and the court wondered why the manufacturer's instructions did not include instructions on bracing as a part of its engineering.

The Baumeister case represents an effort by injured construction employees to hold the design professionals responsible for their injuries. That effort failed. However, the case also involves an important principle for design professionals, i.e., the terms of the contract between owner and design professional must clearly specify the design obligations, and where appropriate, exclude responsibilities which are not those of the design professional. The court indicated a willingness to enforce such contract terms and limitations even where principles of tort law might otherwise permit an injured employee to argue that it was reasonably foreseeable by the design professional that an injury during construction might occur and therefore warnings by the design professional, or disclaimers, are required. The Wisconsin Supreme Court was willing to judge the adequacy of the design professional's conduct based upon the terms of the contract between design professional and owner rather than based on general common law tort principles.

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