

Privity of Contract is Still a Defense Outside of Personal Injury Actions

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A cause of action based upon a breach of duty arising out of a contractual relationship usually arises only in favor of one in privity to the contract, i.e., a party to the contract. An exception to that general rule is that a defendant may be sued for negligence in the performance of its contract if – at the time of the contract – the defendant had knowledge that others were relying on its proper performance. Accordingly, architects and similar design professionals may be liable in tort to persons with whom they are not in privity when it is foreseeable that such persons would detrimentally rely on the professionals' representations or performance.

This exception was discussed in the case *The Parker Venture, LLC v. Chancey Design Partnership, Inc.*, Civ.Act. #3:21-CV-41-CM, United States District Court, Middle District Alabama (March 10, 2021). Chancy designed an apartment building on the campus of Auburn University and the design was completed before the property owner entered into the construction agreement with a general contractor. After this, the owner sold its interest in the apartment building to Plaintiff, Parker Venture. The court held because the Plaintiff was not the owner of the property at the time the design services were provided, it was not foreseeable for the designer at the time it provided its services to the prior owner that Plaintiff would rely on its design work. Therefore, the exception to the general rule requiring privity of contract did not apply. The court dismissed the suit against the architectural firm.

The takeaway is simply this - if you are a design professional – when you perform your contract consider not only your client but also who else your client has a contract with, perhaps a contractor, service provider, or a buyer, as you may also be deemed responsible to that third party.