Neiman v. Leo A. Daly Company, No. B234537 (Cal. Ct. App., October 30, 2012)

Architect who designed theater and provided construction observation services held not liable to an injured theater patron who fell down the theater stairs after completion and acceptance of the construction by the owner. Applying the "completed and accepted" doctrine to the architect, the court held that since the owner accepted the finished work as constructed, the architect was not liable to the third party injured as a result of the condition of the work, even if the architect was negligent in performing the contract, unless the defect in the work was latent or concealed.

In *Neiman v. Leo A. Daly Company*, a theater patron fell while walking down the stairs of a college theater on the Santa Monica Community College campus. Plaintiff sued the College and the theater's architect, Leo A. Daly Company.

Since Plaintiff had conceded the accident was not caused by any deficiency in the architect's plans and specifications, Plaintiff claimed the architect had negligently failed to notify the College, during the construction phase of the project, that the stairs did not have contrast marking stripes as called for in the architect's plans.

The architect argued it could not be held liable for Plaintiffs injuries because the work at the college had been completed and accepted by the College long before Plaintiff's accident. Under the "completed and accepted" doctrine, the architect argued, the College's failure to remedy alleged construction defects which were **patent** — apparent by reasonable inspection — was an intervening cause for which the architect could not be held liable.[1] The trial court agreed. It found the lack of striping to be a patent defect and granted summary judgment for the architect. The Court of Appeal agreed and affirmed the lower court's judgment.

Quoting from *Sanchez v. Swinerton & Walberg Co.* (1996) 47 Cal.App.4th 1461, 1466–1471, the Court reasoned "when the owner has accepted a structure from the contractor, the owner's failure to attempt to remedy an obviously dangerous defect is an intervening cause for which the contractor is not liable." (*Sanchez* at p. 1467.) In other words, an owner has a duty to inspect the work and ascertain its safety; therefore, the owner's acceptance of the work shifts liability for its safety to the owner if a reasonable inspection would have disclosed the defect. In applying the

[1] / Citing *Montijo v. Swift* (1963) 219 Cal.App.2d 351, a case in which the appellate court concluded the architect owed a duty to the injured plaintiff and could be held liable for her injuries, Plaintiff in this case argued the architect should be held liable for her injuries even if the architect established all of the elements of the completed and accepted doctrine. The architect argued that it did not owe a duty of care to a third party such as the Plaintiff since it supervised construction work in its capacity as an agent of the College. (It did, however, acknowledge that it would have owed such a duty if it had prepared the plans and specifications in its capacity as an independent contractor.) The *Neiman* court, however, refused to apply *Montijo*. The *Neiman* court distinguished the *Montijo* case finding that the completed and accepted doctrine was not expressly raised in *Montijo* and the *Montijo* court did not expressly state whether the defect was latent or patent.

completed and accepted doctrine, the Court stated, "the architect's negligence in performing the contract is irrelevant."

This holding is significant in that it expressly extends the completed and accepted doctrine from a contractor to an architect. This case warrants consideration whenever responding to a complaint.

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