

# Construction Law

by Frank O. Brown, Jr.\*

## I. INTRODUCTION

This Article focuses on a few noteworthy construction law decisions by Georgia appellate courts between June 1, 2010 and May 31, 2011.<sup>1</sup>

## II. BUILDING CODES

In *Lumsden v. Williams*,<sup>2</sup> the plaintiffs, a home buyer and his wife, sued the home builders alleging that their home had not been constructed in compliance with the International Residential Code (IRC)<sup>3</sup> standards.<sup>4</sup> The builders moved for summary judgment. The plaintiffs responded with expert affidavits stating that the home failed to comply with the IRC.<sup>5</sup> However, the trial court determined that the Council of American Building Officials (CABO),<sup>6</sup> rather than the IRC, was the applicable code.<sup>7</sup> As urged by the builder, the trial court concluded that the Department of Community Affairs (DCA) had exceeded its authority in adopting the IRC because, while the DCA was authorized to adopt a later edition of the CABO code,<sup>8</sup> the IRC was not merely a later edition

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1. For an analysis of Georgia construction law during the prior survey period, see Frank O. Brown, Jr., *Construction Law, Annual Survey of Georgia Law*, 62 MERCER L. REV. 71 (2010).

2. 307 Ga. App. 163, 704 S.E.2d 458 (2010).

3. Georgia State Amendments to the CABO One and Two Family Dwelling Code, GA. COMP. R. & REGS. 110-11-1-.11 (2002).

4. *Lumsden*, 307 Ga. App. at 164-66, 704 S.E.2d at 461-62.

5. *Id.* at 165, 704 S.E.2d at 461.

6. CABO ONE AND TWO FAMILY DWELLING CODE (1989) [hereinafter CABO Code].

7. *Lumsden*, 307 Ga. App. at 166, 704 S.E.2d at 462.

8. O.C.G.A. § 8-2-20(9)(A)(ii) (2004).

of the CABO code.<sup>9</sup> Because the IRC did not apply and the affidavits from the plaintiffs' experts were premised on its being the applicable code, the trial court struck the expert affidavits and granted the builder summary judgment on the claims of IRC violations.<sup>10</sup> These rulings were upheld on appeal.<sup>11</sup> The Georgia Court of Appeals noted, however, that nothing in the trial court's rulings prevented the plaintiffs from relying on CABO code violations in support of their remaining claims.<sup>12</sup>

### III. PRODUCT-RELATED CLAIMS

In *R & R Insulation Services, Inc. v. Royal Indemnity Co.*,<sup>13</sup> "a fire occurred in an oven at a chicken processing plant" owned by the plaintiff.<sup>14</sup> The plaintiff and its subrogors (collectively referred to as the owner) filed suit for \$260 million against the manufacturer of Class C rated fiberglass-reinforced plastic panels (Class C FRP) and the contractor that installed them.<sup>15</sup> The owner alleged that the manufacturer failed to appropriately test the Class C FRP in foreseeable end uses, specifically including installations using nylon rivets, which led to misrepresentations by the manufacturer about the products "actual combustibility and flame spread properties" and its mislabeling as a Class C interior finish.<sup>16</sup> The owner contended that it relied on the incorrect label when having the Class C FRP installed at its plant and that the mislabeling resulted in the spread of the fire. The owner alleged that the defendant contractor failed to sufficiently warn the owner about the combustibility of the Class C FRP. Also, the owner alleged that the contractor failed either to use metal, rather than nylon, fasteners with the Class C FRP or to select and install Class A FRP instead. The owner contended that these failures resulted in the spread of the fire.<sup>17</sup>

The Georgia Court of Appeals held that the trial court erred in denying the defendants' motion for summary judgment on the plaintiff's negligence per se claim because, even if the defendants were required by the Life Safety Code to test the Class C FRP in actual end-use conditions, the plaintiff's own expert admitted that the Class C FRP met the

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9. *Lumsden*, 307 Ga. App. at 166, 704 S.E.2d at 462.

10. *Id.* at 167-68, 704 S.E.2d at 463.

11. *Id.* at 168, 704 S.E.2d at 463.

12. *Id.*

13. 307 Ga. App. 419, 705 S.E.2d 223 (2010).

14. *Id.* at 419, 705 S.E.2d at 228.

15. *Id.*

16. *Id.*

17. *Id.*

Life Safety Code standards for such materials.<sup>18</sup> Thus, any failure to test was not the proximate cause of the alleged fire and the associated damage.<sup>19</sup> The court of appeals noted that “[a] showing of negligence per se, however, does not establish liability per se. Breach of duty alone does not make a defendant liable in negligence.”<sup>20</sup>

The manufacturer contended that the trial court erred by denying its motion for summary judgment as to the owner’s claims that it had “failed to adequately warn of the dangers of installing . . . Class C FRP in ceiling applications with nylon rivets.”<sup>21</sup> The court of appeals disagreed, reasoning, in part, that it is foreseeable that the public will rely on a manufacturer’s recommendations for installation of a product, which, in this case, included recommendations by the manufacturer for the use of FRP using nylon rivets.<sup>22</sup> Thus, whether the manufacturer breached a duty to warn of dangers and whether such breach proximately caused the fire damages were jury issues.<sup>23</sup> Other jury issues included: whether the owner was a sophisticated user to whom the manufacturer owed no warning,<sup>24</sup> whether the manner and speed at which the Class C FRP would burn should have been obvious to the owner,<sup>25</sup> and whether the use of FRP with nylon rivets was the proximate cause of the fire.<sup>26</sup>

The contractor contended that the trial court erred by denying its motion for summary judgment on its alleged failure to warn about dangers of installing Class C FRP with nylon rivets.<sup>27</sup> The court of appeals agreed.<sup>28</sup> The court held that the contractor had no duty to warn because there was no evidence that the contractor had actual or constructive knowledge that the use of nylon rivets might create a problem.<sup>29</sup> The contractor further argued that “the trial court erred by denying its motion for summary judgment as to its alleged failure to suggest installation of Class A FRP or warn against installing Class C

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18. *Id.* at 425-26, 705 S.E.2d at 232.

19. *Id.* at 425, 705 S.E.2d at 232.

20. *Id.* at 425, 705 S.E.2d at 231 (quoting *Brazier v. Phoenix Grp. Mgmt.*, 280 Ga. App. 67, 70, 633 S.E.2d 354, 357 (2006)). The plaintiff’s counsel also admitted during oral argument that the Class C FRP itself was not the basis for the plaintiff’s claims. *Id.* at 426, 705 S.E.2d at 232.

21. *Id.* at 427, 705 S.E.2d at 233.

22. *Id.* at 428, 705 S.E.2d at 234.

23. *Id.* at 428, 705 S.E.2d at 233.

24. *Id.* at 428-29, 705 S.E.2d at 234.

25. *Id.* at 429, 705 S.E.2d at 234.

26. *Id.* at 429-30, 705 S.E.2d at 234-35.

27. *Id.* at 430, 705 S.E.2d at 235.

28. *Id.*

29. *Id.*

FRP.”<sup>30</sup> Again, the court of appeals agreed with the contractor, reasoning in part that installers have no common law duty to suggest the best product, the owner was aware of the same manufacturer’s warnings about Class C FRP as was the contractor, and the owner itself had installed Class C FRP on the walls of the oven room.<sup>31</sup>

#### IV. SPOILIATION

In *R & R Insulation Services, Inc. v. Royal Indemnity Co.*,<sup>32</sup> the contractor and the manufacturer “contend[ed] that the trial court abused its discretion by denying their joint motion for sanctions, specifically, dismissal of the case, for [the plaintiff plant owner]’s alleged spoliation of evidence.”<sup>33</sup> The Georgia Court of Appeals agreed that the owner spoliated evidence and that the defendants had been prejudiced by that spoliation.<sup>34</sup> But, it affirmed the trial court’s denial of the defendants’ motion for sanctions for spoliation because the only sanction the defendants requested was dismissal, which generally requires evidence of malicious spoliation, and such evidence was lacking.<sup>35</sup>

#### V. INDEMNIFICATION

In *Cagle Construction, LLC v. Travelers Indemnity Co.*,<sup>36</sup> the contractor contracted with the Georgia Department of Defense (GDOD) to perform four projects. The contractor provided a performance and payment bond to the GDOD and signed a general indemnity in favor of the bond issuer. The GDOD declared the contractor in default and demanded that the bond issuer complete the project, which it did. The bond issuer then sued the contractor to recover the amount spent in completing the projects, plus attorney and consultant fees. The trial court denied the contractor’s motion for summary judgment based on the applicable statute of limitation and granted the bond issuer’s motion for summary judgment on its claims. On appeal, the contractor first argued that summary judgment against it on liability was inappropriate because it denied being in default.<sup>37</sup> The Georgia Court of Appeals disagreed, holding that, under the terms of the indemnity agreement, the contractor’s liability was triggered by the GDOD’s declaration of default and the

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30. *Id.* at 431, 705 S.E.2d at 235.

31. *Id.* at 431, 705 S.E.2d at 236.

32. 307 Ga. App. 419, 705 S.E.2d 223 (2010).

33. *Id.* at 435, 705 S.E.2d at 238 (footnote omitted).

34. *Id.* at 437, 705 S.E.2d at 239.

35. *Id.* at 438-39, 705 S.E.2d at 240-41.

36. 305 Ga. App. 666, 700 S.E.2d 658 (2010).

37. *Id.* at 666-68, 700 S.E.2d at 659-61.

payment of completion costs by the bond issuer, and the bond issuer was not required to prove the contractor actually defaulted on the projects.<sup>38</sup>

The contractor's second argument was that there was a factual issue regarding the damages claimed by the bond issuer. As evidence of its damages, the bond issuer attached an affidavit summarizing the amounts incurred in completing the projects.<sup>39</sup> In response, the contractor filed an affidavit stating that "there was no where [sic] near this value of work still to be completed and that these are not reasonable charges. . . ."<sup>40</sup> The court of appeals determined that the contractor's affidavit was conclusory, speculative, and did not raise an issue of fact.<sup>41</sup> Moreover, the court noted that the indemnity agreement provided that, in the event of payment by the bond issuer, the contractor would "accept the voucher or other evidence of such payment as prima facie evidence of the propriety" of the payment and the contractor's liability for that amount.<sup>42</sup> Absent evidence of bad faith or direct evidence that the bond issuer did not incur the expenses, the contractor was bound by that agreement.<sup>43</sup>

The contractor's third argument was that the one-year statute of limitation applicable to actions on a payment bond under Georgia's Little Miller Act, section 13-10-65 of the Official Code of Georgia Annotated (O.C.G.A.),<sup>44</sup> barred the bond issuer's claims.<sup>45</sup> The court of appeals disagreed, noting that the subject claim was not on a payment bond but was on the indemnity agreement.<sup>46</sup> Because that agreement was under seal, the twenty-year statute of limitation under O.C.G.A. § 9-3-23<sup>47</sup> applied.<sup>48</sup>

## VI. ARBITRATION

In *Atlantic Station, LLC v. Vratsinas Construction Co.*,<sup>49</sup> the agreement between the owner and the contractor contained an arbitration provision applicable to claims under that agreement. The contractor filed a demand for arbitration. Eighteen months after commencement

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38. *Id.* at 668, 700 S.E.2d at 660-61.

39. *Id.* at 668-69, 700 S.E.2d at 661.

40. *Id.* at 669, 700 S.E.2d at 661 (internal quotation marks omitted).

41. *Id.* (citation omitted).

42. *Id.* at 667, 700 S.E.2d at 660.

43. *Id.* at 669, 700 S.E.2d at 661.

44. O.C.G.A. § 13-10-65 (2010).

45. *Cagle*, 305 Ga. App. at 669, 700 S.E.2d at 661.

46. *Id.* at 669-70, 700 S.E.2d at 661-62.

47. O.C.G.A. § 9-3-23 (2007).

48. *Cagle*, 305 Ga. App. at 670, 700 S.E.2d at 662.

49. 307 Ga. App. 398, 705 S.E.2d 191 (2010).

of the arbitration, the owner filed a motion in court to stay the arbitration, contending that it had just learned during depositions taken within the last thirty days that the contractor was seeking to recover for work that fell outside the parties' agreement and outside the scope of the arbitration agreement. The trial court denied the motion for stay.<sup>50</sup>

On appeal by the owner, the Georgia Court of Appeals focused on whether the owner had waived any right to stay the arbitration by participating in it for eighteen months, with the court holding that the owner had waived any such right.<sup>51</sup> In reaching that decision, the court rejected the owner's contention that it had just learned of claims outside of the agreement, reasoning that the earlier demand and the amended demand for arbitration should have alerted the owner to those claims.<sup>52</sup>

The court also rejected the owner's contention that it had an absolute right to stay the arbitration because it filed the motion to stay within thirty days after the contractor filed another amendment to the demand for arbitration.<sup>53</sup> The owner relied on O.C.G.A. § 9-9-6(d)<sup>54</sup> in making that argument.<sup>55</sup> O.C.G.A. § 9-9-6(d) states: "After service of the demand, or any amendment thereof, the party served must make application within 30 days to the court for a stay of arbitration or he will thereafter be precluded from denying the validity of the agreement. . . ."<sup>56</sup> The court reasoned that, standing alone, O.C.G.A. § 9-9-6(d) seems to support the owner's position but that O.C.G.A. § 9-9-6(d) must be construed with O.C.G.A. § 9-9-6(b),<sup>57</sup> which states in relevant part the following: "Subject to subsections (c) and (d) of this Code section, a party who has not participated in the arbitration and who has not made an application to compel arbitration may apply to stay arbitration on the grounds that: (1) No valid agreement to submit to arbitration was made."<sup>58</sup> The court noted that the owner would have had the right to seek a stay of the arbitration, despite having participated in it, if the recent amendment had presented an entirely new and different issue.<sup>59</sup>

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50. *Id.* at 398-400, 705 S.E.2d at 192-93.

51. *Id.* at 401-02, 705 S.E.2d at 193-94.

52. *Id.* at 401-02, 705 S.E.2d at 194.

53. *Id.* at 402-03, 705 S.E.2d at 194-95.

54. O.C.G.A. § 9-9-6(d) (2007).

55. *Atlantic Station*, 307 Ga. App. at 402-03, 705 S.E.2d at 194-95.

56. O.C.G.A. § 9-9-6(d).

57. O.C.G.A. § 9-9-6(b) (2007).

58. *Atlantic Station*, 307 Ga. App. at 402-03, 705 S.E.2d at 194-95; O.C.G.A. § 9-9-6(b).

59. *Atlantic Station*, 307 Ga. App. at 403, 705 S.E.2d at 195.

## VII. RIGHT TO REPAIR ACT

In *Lumsden v. Williams*,<sup>60</sup> the buyer of a house and his wife provided written notice of alleged construction defects to the builders/sellers.<sup>61</sup> The notice, however, did not comply with the notice of claim requirements provided by O.C.G.A. § 8-2-38,<sup>62</sup> in what is commonly referred to as the Right to Repair Act (Act).<sup>63</sup> The Act is a mandatory statutory alternative dispute resolution process designed to resolve residential construction defect disputes before presenting disputes in court or in arbitration.<sup>64</sup> When the builders did not respond to the satisfaction of the buyer and his wife, the buyers had remedial repairs made, at least some of which, they contended, mitigated damages.<sup>65</sup>

The buyer and his wife then sued the builders. The builders responded with a motion to dismiss for failure to provide a notice of claim.<sup>66</sup> The trial court did not dismiss the action but stayed it pending compliance with the Act.<sup>67</sup> The buyers then provided a notice of claim, but the parties did not resolve their disputes under the Act, and thus, the suit continued. The builders filed a motion for summary judgment on a number of grounds, including that the buyers could not recover damages relating to the remedial repairs made prior to providing the notice of claim. The trial court granted summary judgment on that basis.<sup>68</sup>

The Georgia Court of Appeals reversed, reasoning that while the remedial repairs “may create a jury issue as to any potential damages,” they do not justify summary judgment.<sup>69</sup> The court added that “[n]othing in the act prevents a potential claimant from taking action to mitigate his losses.”<sup>70</sup>

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60. 307 Ga. App. 163, 704 S.E.2d 458 (2010).

61. *Id.* at 164-65, 704 S.E.2d at 461.

62. O.C.G.A. § 8-2-38 (2004 & Supp. 2010).

63. *Lumsden*, 307 Ga. App. at 165, 704 S.E.2d at 461; *see also* O.C.G.A. §§ 8-2-35 to -43 (2004 & Supp. 2010).

64. O.C.G.A. § 8-2-35.

65. *Lumsden*, 307 Ga. App. at 164-65, 704 S.E.2d at 461.

66. *Id.* at 165, 704 S.E.2d at 461.

67. *Id.*; *see also* O.C.G.A. § 8-2-37 (providing that, upon motion by a party, the trial court shall stay an action subject to the Act when the claimant has not complied with the preconditions to a legal action).

68. *Lumsden*, 307 Ga. App. at 165, 704 S.E.2d at 461.

69. *Id.* at 169, 704 S.E.2d at 463.

70. *Id.*

## VIII. STATUTE OF LIMITATION

In *Smith v. Hilltop Pools & Spas, Inc.*,<sup>71</sup> a pool owner sued a pool contractor for damages to the pool resulting from the pool being constructed atop buried garbage. The trial court granted summary judgment to the contractor.<sup>72</sup> On appeal, the owner argued that the trial court erred in determining that “his breach of contract and negligence claims were barred by the six-year statute of limitation” applicable to written contracts.<sup>73</sup> The owner contended that the six-year period did not commence at the substantial completion of the pool but, rather, at the later date by which the contractor had promised, but failed, to replace the pool liner.<sup>74</sup> The Georgia Court of Appeals rejected the owner’s contention, reasoning that the alleged breach—the construction of the pool on garbage—occurred no later than substantial completion, and the later breach of the promise to replace the pool liner did not extend the commencement date of the six-year statute of limitation.<sup>75</sup>

## IX. STATUTE OF REPOSE

In *Rosenberg v. Falling Water, Inc.*,<sup>76</sup> more than ten years after substantial completion of a house, the third owner of the house sued the builder for personal injury suffered during the collapse of a deck constructed by the builder. In addition to negligence, the homeowner contended that the builder committed fraud by constructing the deck in a manner that concealed its defects.<sup>77</sup> Based on the construction-related statute of repose in O.C.G.A. § 9-3-51,<sup>78</sup> the trial court granted the builder’s motion for summary judgment.<sup>79</sup> That decision was affirmed by the Georgia Court of Appeals.<sup>80</sup>

Before the Georgia Supreme Court, the homeowner again urged that the builder should be equitably estopped from asserting the statute of repose because of the builder’s alleged fraudulent concealment of the

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71. 306 Ga. App. 881, 703 S.E.2d 424 (2010).

72. *Id.* at 881-82, 703 S.E.2d at 425-26.

73. *Id.* at 883, 703 S.E.2d at 426.

74. *Id.* at 883-84, 703 S.E.2d at 426-27.

75. *Id.*

76. 289 Ga. 57, 709 S.E.2d 227 (2011).

77. *Id.* at 57-58, 709 S.E.2d at 228-29.

78. O.C.G.A. § 9-3-51 (2007).

79. *Rosenberg*, 289 Ga. at 59, 709 S.E.2d at 229.

80. *Id.*



defects in the deck.<sup>81</sup> The court rejected that argument by distinguishing cases that applied equitable estoppel to a statute of repose defense.<sup>82</sup> In those cases, the court noted the injury occurred prior to the expiration of the statute of repose and the defendant misled the plaintiff about the cause of the injuries.<sup>83</sup> To the contrary, in this case, the homeowner's injuries did not happen until after the statute of repose expired; therefore, no action by the builder could have deterred the homeowner from thereafter asserting his claim prior to the expiration of the statute of repose.<sup>84</sup>

#### X. GENERAL LIABILITY INSURANCE

In *American Empire Surplus Lines Insurance Co. v. Hathaway Development Co.*,<sup>85</sup> a general contractor sued a plumbing subcontractor's general liability carrier for recovery of a default judgment that the general contractor had obtained against the subcontractor.<sup>86</sup> The trial court granted summary judgment to the insurer, reasoning that coverage was lacking because there was no "occurrence" under the general liability policy.<sup>87</sup> The Georgia Court of Appeals reversed.<sup>88</sup>

The Georgia Supreme Court granted certiorari to determine whether the court of appeals had erred in construing the term "occurrence."<sup>89</sup> The policy defined occurrence as "an accident, including continuous or repeated exposure to substantially the same, general harmful conditions."<sup>90</sup> The policy did not define "accident."<sup>91</sup> The supreme court stated that it would therefore apply the commonly accepted meaning of accident as used in general liability policies.<sup>92</sup> It offered several similar examples of that meaning, including "an unexpected happening [without] intention or design"<sup>93</sup> and "injuries or damage neither

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81. *Id.*

82. *Id.* at 59-61, 709 S.E.2d at 229-30.

83. *Id.* at 59, 709 S.E.2d at 229.

84. *See id.* at 59-61, 709 S.E.2d at 229-30.

85. 288 Ga. 749, 707 S.E.2d 369 (2011).

86. *Id.* at 750, 707 S.E.2d at 370.

87. *Id.* (internal quotation marks omitted).

88. *Id.*

89. *Id.* at 749-50, 707 S.E.2d at 370.

90. *Id.* at 750, 707 S.E.2d at 370 (internal quotation marks omitted).

91. *Id.* at 750-51, 707 S.E.2d at 371.

92. *Id.* at 751, 707 S.E.2d at 371.

93. *Id.* (quoting *City of Atlanta v. St. Paul Fire & Ins. Co.*, 231 Ga. App. 206, 208, 498 S.E.2d 782, 784 (1998)) (internal quotation marks omitted).

expected nor intended from the standpoint of the insured.”<sup>94</sup> Applying these similar definitions, the supreme court held that “an occurrence can arise where faulty workmanship causes unforeseen or unexpected damage to other property.”<sup>95</sup> The court rejected the insurer’s contention that its insured’s acts could not be deemed an occurrence or accident because they were performed intentionally, stating: “[A] deliberate act, performed negligently, is an accident if the effect is not the intended or expected result; that is, the result would have been different had the deliberate act been performed correctly.”<sup>96</sup>

#### XI. WARRANTY AND PUNCH LISTS

At the home’s transactional closing, the buyer and builders/sellers in *Lumsden v. Williams*<sup>97</sup> signed a “Walk Through List of items to be completed after closing” (List) that stated that the List “shall amend the prior Agreement of the parties.”<sup>98</sup> The prior agreement was the purchase agreement.<sup>99</sup> The List stated that the builder provided a one-year guarantee “on [the] basement not leaking.”<sup>100</sup> The parties also agreed that the closing attorney would hold \$10,000 in escrow until the items on the List were completed.<sup>101</sup> A few months after closing, the parties added a handwritten stipulation on the List that stated the List “has been completed” and that \$9,300 of the escrowed funds were to be paid to the builder and \$700 to the buyer and his wife “due to expenses incurred in accomplishing certain items on [the] walk through list and [for] other expenses.”<sup>102</sup>

The buyer and his wife thereafter sued the builders for defects relating to items on the List. The builders sought, and the trial court granted, summary judgment as to those defects, reasoning that there had been an accord and satisfaction as to items on the List.<sup>103</sup> The Georgia Court of Appeals reversed, determining that, while the handwritten stipulation established as a matter of law that the builders performed the repairs on the List and that the buyer and his wife received their portion of the

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94. *Id.* (quoting U.S. Fire Ins. Co. v. J.S.U.B., 979 So. 2d 871, 883 (Fla. 2007)) (internal quotation marks omitted).

95. *Id.* at 752, 707 S.E.2d at 372.

96. *Id.* (quoting Lamar Homes, Inc. v. Mid-Continent Cas. Co., 242 S.W.3d 1, 8 (Tex. 2007)) (internal quotation marks omitted).

97. 307 Ga. App. 163, 704 S.E.2d 458 (2010).

98. *Id.* at 164, 704 S.E.2d at 460 (internal quotation marks omitted).

99. *See id.*

100. *Id.* (internal quotation marks omitted).

101. *Id.*

102. *Id.* (internal quotation marks omitted).

103. *Id.* at 169, 704 S.E.2d at 464.

costs associated with those repairs, a jury issue remained as to whether the stipulation resolved construction quality issues.<sup>104</sup>

The trial court also granted summary judgment to the builders on the warranty claims, finding that the one-year guarantee against basement leaks found in the List superseded the one-year general warranty in the purchase agreement.<sup>105</sup> The trial court based that conclusion on the List's provision that it "shall amend the prior agreement of the parties."<sup>106</sup> The court of appeals reversed.<sup>107</sup> The court noted that the List did not state that it superseded the purchase agreement or its one-year general warranty and held that a jury would have to decide whether the parties intended for it to do so and, if so, whether the buyer received consideration for such an agreement.<sup>108</sup>

The trial court also granted summary judgment to the builders on the warranty claims, reasoning, in part, that notice of a warranty claim had to be provided within the one-year warranty period.<sup>109</sup> The court of appeals reversed, stating, in part, that while the warranty clearly applied only to defects that arose during the warranty period, it did not require notice of a warranty claim within that period because it did not include such a requirement.<sup>110</sup>

## XII. CONCLUSION

The cases discussed in this Article are some of the significant Georgia appellate decisions during the period between June 1, 2010 and May 31, 2011. Other significant decisions during this period include: *Weinstock v. Novare Group, Inc.* (fraud);<sup>111</sup> *Madison Retail Suwanee, LLC v. Orion Enterprises Sales & Service, Inc.* (mechanics' and materialmen's liens);<sup>112</sup> *Effingham County Board of Commissioners v. Park West Effingham, L.P.* (impact fees);<sup>113</sup> *Helms v. Franklin Builders, Inc.*,<sup>114</sup> and *South Point Retail Partners, LLC v. North American Properties Atlanta, Ltd.* (arbitration);<sup>115</sup> *Lumsden v. Williams* (acceptance doc-

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104. *Id.* at 170, 704 S.E.2d at 464.

105. *Id.*

106. *Id.* (internal quotation marks omitted).

107. *Id.* at 170, 704 S.E.2d at 465.

108. *Id.* at 170, 704 S.E.2d at 464-65.

109. *Id.* at 170-71, 704 S.E.2d at 465.

110. *Id.*

111. 309 Ga. App. 351, 710 S.E.2d 150 (2011).

112. 309 Ga. App. 712, 711 S.E.2d 71 (2011).

113. 308 Ga. App. 680, 708 S.E.2d 619 (2011).

114. 305 Ga. App. 863, 700 S.E.2d 609 (2010).

115. 304 Ga. App. 419, 696 S.E.2d 136 (2010).

trine);<sup>116</sup> *HNTB Georgia, Inc. v. Hamilton King* (expert testimony);<sup>117</sup> and *Electric Works CMA, Inc. v. Baldwin Technical Fabrics, LLC* (Prompt Pay Act).<sup>118</sup>

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116. 307 Ga. App. 163, 704 S.E.2d 458 (2010).

117. 287 Ga. 641, 697 S.E.2d 770 (2010).

118. 306 Ga. App. 705, 703 S.E.2d 124 (2010); *see also* O.C.G.A. tit. 13, ch. 11 (2010).