



A Complicated Relationship – Is It Necessary To Plead A Special Relationship To State A Cause of Action for Common Law Indemnity?

Posted in [Articles](#) by Adam C. King on Fri Jan 16, 2015

In construction defect lawsuits, parties routinely assert common law indemnity claims against downstream subcontractors, material suppliers, and other entities whose work or materials caused the respective defects. Common law indemnity is a claim that shifts responsibility for damages from a party without any active negligence or fault, but who is liable for damages pursuant to vicarious, constructive, derivative, or technical liability principles, to the party who is actively negligent or at fault. In the seminal Florida common law indemnity case, *Houdaille Industries, Inc. v. Edwards*, 374 So. 2d 490 (Fla. 1979), the Supreme Court stated that there is no right to common law indemnity absent a “special relationship” which makes the prospective indemnitee vicariously, constructively, derivatively, or technically liable for the wrongful acts of the prospective indemnitor. Because Florida law does not clearly define this purported “special relationship,” defendants frequently move to dismiss common law indemnity claims because the plaintiff has not properly pled that a “special relationship” exists between the parties.

In *Diplomat Properties Ltd. Partnership v. Tecnoglass, LLC*, et al., 114 So. 3d 357 (Fla. 4th DCA 2013), the Fourth District Court of Appeals determined that a “special relationship” is not a separate element that a plaintiff must plead to state a common law indemnity cause of action. The case relates to the construction of The Westin Diplomat hotel in Hollywood, Florida which the plaintiff, Diplomat Properties Ltd. Partnership (“Diplomat”), owned. During the project’s construction, Diplomat hired Shower Concepts, Inc. to furnish and install glass shower doors in the guest rooms. Shower Concepts entered into a contract with Tecnoglass to fabricate the shower doors. After the hotel opened, numerous shower doors spontaneously fractured as a result of a manufacturing defect. Diplomat obtained an arbitration award and final judgment against Shower Concept for the associated damages. The arbitration award did not include any finding that Shower Concepts was vicariously, constructively, derivatively, or technically responsible for Tecnoglass’ manufacturing defects. In lieu of executing on the judgment, Diplomat took an assignment of Shower Concepts’ claims against Tecnoglass. As Shower Concepts’ assignee, Diplomat then filed a separate lawsuit against Tecnoglass which included a common law indemnity claim alleging that Shower Concepts was held vicariously, constructively, derivatively, or technically liable for the wrongful acts of Tecnoglass. Tecnoglass successfully moved to dismiss the common law indemnity claim because Diplomat failed to allege that a “special relationship” existed between Shower Concepts and Tecnoglass.

On appeal, the Fourth District reversed the trial court’s decision and held that Diplomat was not required to specifically plead the existence of a “special relationship” between Shower Concepts and Tecnoglass. The Court stated that “[t]he term ‘special relationship’ merely describes a relationship which makes a faultless party only vicariously, constructively, derivatively, or technically liable for the wrongful acts of the party at fault.” Thus, if a plaintiff sufficiently pleads the existence of vicarious, constructive, derivative, or technical liability, there is no separate requirement to allege that a “special relationship” exists. It appears that common law indemnity claims will be more likely to clear the purposefully low hurdle of motions to dismiss and may now be a more viable basis to shift liability to the parties that bear responsibility for defect claims.