The Legal Pad

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Colorado Abandons the "Completed and Accepted Rule" in Favor of the "Foreseeability Rule" in Determining a Contractor's Duty to a Third Party After Work Has Been Completed

In a recent case, the Colorado Court of Appeals found that a contractor had a duty to a third party to warn it of a dangerous condition, even after the contractor had completed its work and the owner had accepted the contractor's work. Collard v. Vista Paving Corp., -- P.3d --, 2012 WL 5871446 (Colo. App. 2012). While not an earth shattering or entirely new concept, the decision rendered in Collard directly accepted the foreseeability rule at the expense of the completed and accepted rule. Collard, 2012 WL 5871446 at 9.

In Collard, the City of Grand Junction ("the City") hired Vista Paving Corp. ("Vista") to construct two road medians according to the City's plans and designs. On July 9, 2007, Vista began work on the medians. According to its contract with the City, Vista was responsible for traffic control during construction of the medians. On July 19, 2007, Vista completed its construction of both medians. On that date, the City's project inspector conducted his final inspection of Vista's work. The City's inspector then told Vista that its work had been completed and that Vista was authorized to leave the site. Vista requested permission to remove the traffic control devices to which the City's inspector agreed. Vista removed all of its traffic control devices.

The City's inspector testified that after his inspection he notified the City's traffic control division that since Vista was finished with its work the traffic division could come in and restripe the road so it was safe for third-party motorists. The City's inspector and the City's project manager for installation of the medians both swore in affidavits submitted to the district court that Vista, upon completion of its work, was not responsible for traffic control. Thereafter, for five days leading up to July 24, 2007, the City did not put any traffic control devices in place at the medians or repaint the dividing line that was leading directly into the center of one of the newly constructed medians.

At 3:30 a.m. on July 24, 2007, a truck collided with the median flattening two tires and damaging its tire rims. Roughly two hours later, Collard was driving on the road and collided with one of the newly constructed medians, totaling her vehicle and causing her various injuries. Collard sued the City and Vista under Colorado's Premises Liability Act § 13-21-115 (the "PLA") and common law negligence. The claims against the City were dismissed based on immunity under Colorado's Governmental Immunity Act, §§ 24-10-101 to 120. Vista filed a motion for summary judgment regarding the PLA claim which the court granted, and the Court of Appeals upheld, based on the evidence that Vista finished its work and was authorized to leave the work site and remove its traffic control items. Thus, the only claim remaining was the common law negligence claim against Vista.

The district court judge granted a motion for summary judgment in the favor of Vista regarding the common law negligence claim. However, the Court of Appeals reversed that decision because the motion was granted on the wrong basis. The Court of Appeals found that the trial court's reasoning reflected an application of a common law doctrine known as the "completed and accepted" rule. Thus, the Court in Collard addressed, as a matter of first impression, whether Colorado has adopted the completed and accepted rule or the more modern "foreseeability rule."

Generally, under the "completed and accepted" rule, an independent contractor owes no duty of care to third parties with respect to the work it has performed once that work has been completed by the contractor and accepted by the property owner or general contractor. Once the contractor's work is accepted, the general contractor or owner becomes answerable for any damages or injuries resulting from the defective or dangerous condition of the work. However, as the Court of Appeals notes, the recent trend among United States jurisdictions has been to abandon the competed and accepted rule entirely in favor of the foreseeability rule.

The Court of Appeals went on to state that "the foreseeability rule provides that a construction contractor is liable for injury or damage to a third person as a result of its work, even after completion of the work and acceptance by the owner where it was reasonably foreseeable that third persons would be injured by such work due to the contractor's negligence or failure to disclose a dangerous condition known to such contractor." Collard, 2012 WL 5871446 at 9.


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The Court of Appeals conducted a lengthy discussion regarding both rules and the fact that Colorado appellate courts have not officially adopted one or the other. In the end, the Court concluded that Colorado has rejected the completed and accepted rule in the specific context of construction law, including repair, installation, and performance on a service contract. The Court found that Colorado appellate courts have consistently relied on the foreseeability rule.

In applying the foreseeability rule to the Collard case, the Court of Appeals did add one caveat. The Court concluded "as a matter of first impression in Colorado, that because Vista's road construction work created a dangerous condition, it had a tort duty, for a reasonable period of time, either to eliminate the condition or to warn foreseeable users (such as Collard) of the road hazards that foreseeably could result in injuries, even if its work had been completed and accepted by the City; **however, this duty will not be imposed if Vista had a reasonable good faith belief that another authorized party (here, the City) would promptly take the necessary measures to eliminate the dangerous condition or provide adequate warnings to foreseeable users.**" Collard, 2012 WL 5871446 at 14 (emphasis added).

Based on that conclusion, the case was remanded to the lower court to review the case under the proper duty rule, foreseeability. Specifically, the Court stated that attention should be paid to whether Vista had a reasonable, good fair belief that the City would promptly take the necessary measures to eliminate or provide warnings of the alleged dangerous condition on the site to third parties.

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To learn more about the Collard v. Vista Paving Corp. case or about construction litigation in Colorado, you can reach Brady Iandiorio at (303) 987-9816 or iandiorio@hhmrlaw.com.