For years, the District Court of South Carolina has held that a litigant cannot disguise a claim as a negligence claim when in fact it is a claim for indemnity. The two claims must be separate and distinct to both survive through judgment.

Recently, the South Carolina Court of Appeals adopted the District Court’s rationale when it had an opportunity to address similar issues in Stoneledge at Lake Keowee Owners’ Ass’n v. Clear View Const., LLC, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) (Stoneledge I) and Stoneledge at Lake Keowee Owners’ Ass’n v. Builders FirstSource-Se. Grp., 413 S.C. 630, 635-37, 776 S.E.2d 434, 437-38 (Ct. App. 2015), reh’g denied (Sept. 14, 2015) (Stoneledge II) (collectively referred to as the “Stoneledge Appeals”).

The Stoneledge Appeals both arise out of the same construction defect action brought by the homeowners association at Stoneledge at Lake Keowee against one of the general contractors, Marick Home Builders, LLC (“Marick”), and its subcontractors. Marick cross-claimed against its subcontractors for negligence, breach of contract, breach of warranty, contractual indemnification, and equitable indemnification. The subcontractors filed motions for summary judgment arguing Marick’s cross-claims were nothing more than masked claims for indemnity.

On appeal, Marick argued that its negligence cross-claim was a separate cause of action from its equitable indemnity claim; however, the Court of Appeals disagreed. Marick’s allegations of negligence were dependent upon the Plaintiff prevailing against the general contractor, Marick. The Court of Appeals noted “Marick’s allegations demonstrate it did not sustain its own damages as a result of any negligence by the respondents. Rather, the allegations show Stoneledge is the party that suffered damages, and Marick’s injuries arose exclusively from having to defend itself in Stoneledge’s lawsuit.”

Citing to the circuit court’s reliance on Stone and USF&G, the Court of Appeals held Marick’s negligence claim was nothing more than a revised claim for indemnity. Thus, the Court found the negligence crossclaim was not an independent cause of action but rather a claim for equitable indemnity.

The Court of Appeals applied the same analysis in Stoneledge II. In that action, the Court of Appeals addressed the circuit court’s grant of the cross claimants’ motions for summary judgment for Marick’s crossclaims of breach of contract and breach of warranty. On appeal, Marick argued its breach of contract and breach of warranty claims were separate and distinct causes of action from its equitable indemnity claim. However, Marick’s allegations were dependent upon the Plaintiff prevailing against the general contractor, Marick. The Court of Appeals held the allegations themselves demonstrated the breach of contract and breach of warranty claims were not independent claims because Marick did not sustain its own independent damages resulting from any breach.

The Court explained Marick’s damages for breach of contract and breach of warranty were all dependent on whether or not Stoneledge suffered damages...
due to a breach by Marick.15 If Marick was held to have breached its duties to Stoneledge, only then would Marick have damages against its subcontractors.16 As such, Marick’s claims were simply claims for equitable indemnity.17

Both Stoneledge Appeals illustrate a laundry list of causes of actions that are nothing more than masked claims for indemnity subject to motions for summary judgment. However, the Stoneledge Appeals do not stand for the contention that all construction defect claims will automatically be held to be masked claims for indemnity. For example, when a general contractor has an independent breach of contract action against its subcontractors that is independent of the general contractor being found liable to the owner, then those independent actions and damages should survive summary judgment. As such, the Stoneledge Appeals do not hold that a general contractor can only maintain claims for indemnity or contribution against its subcontractors in a construction defect case. Rather, a party must have an independent cause of action and damages to prevail on a claim other than indemnity.

Footnotes

1 This article is for general informational purposes only. It does not necessarily express the opinions of the firm or any of its attorneys or clients. This article is not intended to be used as a substitute for specific advice or opinions as each case and its circumstances are different.

2 Trey Watkins is a shareholder in the Charleston office of Wall Templeton & Haldrup, P.A. with a practice focused Insurance defense including construction disputes, serious personal injury, and complex litigation. Katie Stanton is an associate at Wall Templeton & Haldrop, P.A. practicing in complex litigation, commercial litigation, and construction.


5 See generally Id.

6 Stoneledge I, 413 S.C. 615, 776 S.E.2d 426.

7 Marick alleged that the subcontractor’s negligence caused Marick “to incur attorneys’ fees, costs, and face potential liability to [Stoneledge].” The cross-complaint also stated, “Should [Stoneledge] prevail on [its] claims, Marick ... is entitled to recover ... legal fees and costs or [any amount it is] ordered to pay to [Stoneledge].” Stoneledge I, 413 S.C. at 621, 776 S.E.2d at 429.

8 Id.

9 Id. at 622, 776 S.E.2d at 430

10 Stoneledge II, at 635, 776 S.E.2d at 437.

11 Marick alleged the following:

“If [Stoneledge’s] allegations are true, ... [the respondents] have provided defective materials or services in breach of “636 each of their contracts with Marick... [S]aid breach of contract has resulted or could result in damage to [Stoneledge], which could or will be assessed against Marick.”

“If [Stoneledge’s] allegations are true ..., [the respondents] breached their express and/or implied warranties.... Should [Stoneledge] prevail on [its] claims, Marick will be damaged as a direct and proximate result of [the respondents’] breach of their express and/or implied warranties.” Stoneledge II, at 635-36, 776 S.E.2d at 437.

12 Id.

13 Id.

14 Id.

15 Id.