

## Construction Law Practice Tip: Owner Not Liable for Roof Inspector's Fall

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PRACTICES Construction Litigation

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The Property Owner's Liability for Acts of Independent Contractors and Amount of Recovery statute (Tex. Civ. Prac. & Rem. Code Chapter 95) does not protect business owners from liability for all the acts of independent contractors. It protects owners from claims "that arise[] from the condition or use of an improvement to real property where the contractor or subcontractor *constructs, repairs, renovates, or modifies* the improvement."<sup>1</sup> In *First Texas Bank v. Carpenter*, the Texas Supreme Court held that Chapter 95 does not protect an owner from a contractor who merely inspects the improvement. 491 S.W.3d 729, 730, 733 (Tex. 2016).

Carpenter, First Texas Bank's roof repair "go-to guy," climbed on the bank's roof with the bank's ladder, fell, and crushed two vertebrae. His task was to show hail damage to an adjuster. The bank had not yet hired anyone for the actual repairs, even though Carpenter expected to get the work. Carpenter alleged that the ladder was defective and sued the bank. The bank invoked Chapter 95, which shields owners from liability under such circumstances unless the owner controlled the work and had actual knowledge of the danger and failed to warn.<sup>2</sup>

The Supreme Court first rejected the Austin Court of Appeals' holding that Chapter 95 did not apply because absent an "'actual' contract to perform specific work for stated compensation," Carpenter was not a contractor. The court gave the term "contractor" its ordinary meaning and held that "a contractor is simply someone who works on an improvement to real property." The term's linchpin is "the kind of work being done, not . . . whether an agreement for the work to be done is written, or formal, or detailed." Moreover, Chapter 95 covers contractors' "employees, subcontractors, and their subcontractors' employees, none of whom would ordinarily have a contract with the owner." Carpenter, therefore, was a contractor under Chapter 95 as a matter of law.

But the court also rejected the bank's claim that Chapter 95 applied, holding that

Chapter 95 does not cover everyone injured while working on real property; it expressly covers only contractors, subcontractors, and their employees "who construct[ ], repair[ ], renovate[ ], or modif[y] an improvement to real property". The statute does not apply to one injured apart from such work.<sup>3</sup>

The record did not show that the bank had retained Carpenter for the actual repairs. The inspection, therefore, was not the first step in a repair process and Carpenter did not satisfy any of the conditions in § 95.003. Significantly, the court added that had the bank retained Carpenter for the repairs, then the roof visit with the adjuster could have been the first step in repairing or modifying the roof, and Chapter 95 would have applied. For these reasons, the Supreme Court affirmed the court of appeals' decision that the trial court erred in granting summary judgment for the bank and it remanded for further proceedings.

The take-away is that owners can only expect to benefit from Chapter 95's protection when they hire contractors to construct, repair, renovate, or modify real property improvements. A mere

inspection in preparation for these activities, as in this case, does not qualify.

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<sup>1</sup> Tex. Civ. Prac. & Rem. Code § 95.002(2), 003 (emphases added).

<sup>2</sup> *Id.* § 95.003.

<sup>3</sup> *Carpenter*, 491 S.W.3d at 732 (citation omitted).