

- 1 **SAFETY REVIEW
NOT SPECIFIED IN CONTRACT**
- 2 **no evidence in the contract between the architects and the city that the architects were required to conduct a safety review in their assessment of the city's Water Gardens renovation project.**
- 3 **absent a legal duty owed to park users, the architects could not be held liable for drowning deaths allegedly caused by the unreported safety hazards.**
- 4 **Dukes
v.
Phillip Johnson/Alan Ritchie, Architects, P.C.

(Tex.App. 3/27/2008),**
- 5 **plaintiff must prove that the defendant had control over and responsibility for the premises" that caused the injury.**
- 6 **Ordinarily a person who does not own the real property must assume control over and responsibility for the premises

before there will be liability for a dangerous condition existing on the real property.**
- 7 **individual who has created the dangerous condition

or who has agreed to make safe a known, dangerous condition may be liable**

even though not in control of the premises at the time of injury.”

8 Dukes had alleged that the architects “owed a duty to the decedents

because, as professionals, they were under the ethical obligation to report any unsafe or hazardous conditions that they observed during their review of the Water Gardens.”

9 no binding authority to support Dukes' proposition that a court must take into consideration professional codes of ethics when conducting a duty analysis.”

10 “professional negligence law has not yet been broadened to include the evaluation of professional codes of ethics in the determination of whether a duty is owed.”

11 architects “had no legal duty arising from their profession as architects to report safety hazards that they may have discovered in their assessment of the Water Gardens.”

12 contract for professional services gives rise to a duty by the professional to exercise the degree of care, skill, and competence

that reasonably competent members of the profession would exercise under similar circumstances.”

13 architect's duty depends on the particular agreement entered into with his employer.”

14 **To constitute a valid contract, there must be an offer, acceptance, meeting of the minds,**

each party's consent to the terms, execution, and delivery of the contract with the intent that it be mutual and binding.

15 **look to the actual contract between the architects and the city to determine what, if any, legal duty was owed by the architects**

contract did not require the architects to address safety issues.”

16 **architects would provide "a review of existing conditions," including the "pavement, steps, and railings"; the "pools' surfaces, plumbing and lighting"; the "changes to the original Water Gardens for compliance with the ADA";**

17 **and development of "appropriate repair options and establishing of repair priorities."**

18 **Nowhere does the contract specify that the architects had any contractual obligation to report or make safe any hazards that they may have detected in the Water Gardens.**

19 **“no evidence that the contract required the architects to report or make safe any hazards detected,”**

20 **rejected Dukes' assertion that the architects owed a legal duty to the decedents arising from their contractual relationship with the city.**

21 **PREMISES LIABILITY**

- 22 foreseeability of harm is considered in determining the duty that an occupier of premises owes to invitees.
- 23 undisputed fact that the City was the owner and occupier in exclusive control of the Water Gardens,

not the architects.
- 24 architects never conducted any work at the Water Gardens,

nor did the City ever contact them to implement any of the recommendations contained in the conditions survey.”
- 25 no evidence indicating the architects had exclusive control over the Water Gardens,

no duty of reasonable care may be imposed upon the architects under general premises liability law.
- 26 liability may still be imposed if the party has agreed to make safe a known, dangerous condition on the premises

and failed to do so or if the party has created the dangerous condition.
- 27 architects never expressly or impliedly agreed to make safe a known, dangerous condition,

nor did they create the dangerous condition.”

28 architects' contract with the city only required the architects to provide "a review of the Water Gardens' existing conditions

so that the City could repair and restore the Water Gardens consistent with the original design and to comply with the ADA."

29 contract imposed no responsibility upon the architects to remedy the problems that they discovered in the course of their review

30 contract itself demonstrates that the architects never expressly agreed to make safe a known, dangerous condition,

31 conducting their review, the architects had "observed a hazard in the form of 'algae or growth or fungus or something like this' on the stepping stones around the Active Water Pool that created a slipping risk for falls into the pool."

32 Dukes contended that liability should be imposed because "the architect's report only made an obscure reference to cleaning of organic deposits and said nothing about a drowning hazard."

33 appeals court rejected this argument.

architects never expressly or impliedly agreed to correct any problems discovered in the course of their review.

34 no duty to correct any potential hazard that they observed.

35 no evidence that "the City relied on the architects 1999 assessment of the

Water Gardens or shown that their inspection increased the risk of harm.”

36 **the City never contacted the architects regarding any of the changes they suggested,**

nor did the City implement any of the suggestions or modifications contained in the 1999 conditions survey.”

37 **architects included their observation that algae or some other organic growth was detected on the concrete surfaces in the conditions survey,**

38 **“no evidence that the architects owed or assumed any duty to the decedents,”**

“as a matter of law... the architects work on the Water Gardens restoration project gave rise to no legal duty.”

39 **affirmed the summary judgment of the trial court in favor of the architects.**

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