



“PATENT” v. “LATENT” DEFECTS WHY THIS DISTINCTION IS IMPORTANT

An important distinction exists between patent and latent defects. Patent defects are open and obvious conditions whereas latent defects are hidden or concealed conditions which are not readily discoverable with reasonable inspection. The distinction can be critical in later litigation. For example, a contractor is not responsible for injuries to others for open and obvious (patent) defects in its work **after** the owner accepts the project. This is known in Florida as the *Slavin* doctrine. Under the *Slavin* doctrine the injuries sustained must occur (1) after the contractor completed its work; (2) the owner of the property accepted the contractor's work; and (3) the defects causing the injury were patent.¹

In 1988, the Florida Supreme Court extended the application of the *Slavin* doctrine to engineers and other design professionals.² Recently, the Fifth District reaffirmed the application of the *Slavin* doctrine even in the face of blatant deviation from standard practices.³ In *Transportation*, a person died when her car struck an un-cushioned guardrail. Plaintiff's estate brought suit against the DOT, the design engineer, and contractor. Plaintiff alleged that the design engineer breached its duty of care by negligently designing the guardrail contrary to accepted standards.

Pivotal to the court's decision was that the design engineer submitted plans to the DOT depicting the use of anchorages instead of crash cushions as set forth in DOT's standard design. However, the designer was acting on DOT's direction. The engineer argued that the DOT accepted its design knowing of the deviation; therefore, the DOT should be responsible and not the engineer. The appellate court agreed. The court reasoned that if *Slavin* barred Plaintiff's claims against the contractor, it also barred claims against the design engineer even where the design was contrary to a set standard. Essentially, the nature of the defect was the same as to both defendants and the patency of that defect was the same as to both defendants

1. *Foreline Sec. Corp. v. Scott*, 871 So.2d 906, 909 (Fla. 5th DCA 2004); See also *Plaza v. Fisher Dev., Inc.*, 971 So.2d 918, 924 (Fla. 3d DCA 2007).
2. *Easterday v. Masiello*, 518 So.2d 260 (Fla. 1988) (The Florida Supreme Court held that *Slavin* precluded recovery against an architect and/or engineer for personal injury to a third party caused by a patent design defect in a structure).
3. *Transportation Engineering, Inc. v. Cruz*, 20144 WL 5782251 (Fla. 5th DCA November 7, 2014).

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What This Means For You

Design professionals should confirm in writing an owner's direction to deviate from applicable standards. However, the case reviewed highlights the stress between satisfying the requests of a client and the ethical obligations a design professional owes to the public at large.

SIDE BAR: Building a Community through Giving

Our firm had the opportunity and pleasure to help restore the rehabilitation park for local veterans who call Orlando Health & Rehabilitation Center their home. This event was a great way to make a real difference in our community, while strengthening our relationships. We look forward to doing similar projects in the up-coming year.

Being a good corporate citizen is a core value for us.

“It takes each of us to make a difference for all of us.”
– Jackie Mutcheson



Serving the Construction Industry

The attorneys of Gregory S. Martin & Associates are dedicated to representing those in the construction industry. Having represented national and international owners, contractors, design professionals and their carriers in Florida and throughout the country, our attorneys are committed to the highest professional standards and service. Mr. Martin and the members of his team have litigated multi-million dollar disputes involving, among others, construction and design defects, extra work, differing site conditions, schedule delays and acceleration, contract payment disputes, construction and mechanics' liens, payment/performance bonds and bid protests.

Attorneys

Gregory S. Martin, Managing Partner
Frank J. Hild, Partner
Jennifer G. Craddock, Attorney
Megan A. Picataggio, Attorney
Scott R. Foss-Kilburn, Attorney

Contact

Florida Office:
555 Winderley Place,
Suite 415
Maitland, FL 32751
Telephone (407) 660-4488
Facsimile: (407) 660-4540

Web

www.gsmartinlaw.com

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