



"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 3:27

Greetings from Derreck Brown

Greetings from the Austin office! Well, it is November. The weather is turning cooler. Even the leaves are starting to fall here in central Texas. This means we can almost see the end of 2020, which may not come fast enough for most of us, and the holiday season is fast approaching. Of course, this year, the way we spend our holidays will likely be a bit different from past years in this age of the "new normal." That being said, I do know there are some things that will not change. There is a good chance I will be overeating. Another constant is that everyone is making an end-of-year push to resolve lawsuits. This year, it seems November and December may even be busier than usual as plaintiff attorneys try to make up for lost time this year. It seems like we have mediations scheduled on almost a daily basis through the next two months. As everything gets busier and more hectic with holidays and work, I am reminded that this is the time of year that we should take a moment from hectic schedules and appreciate everything we have, whether it be family, friends, or health. We at Fletcher Farley are certainly thankful for you. Regardless of how you spend it this year, please have a happy and safe holiday season!



Don't Forget about RCLA

Brandon Wentworth

As a general matter, plaintiffs tend to understand their cases in pretty simple terms: somebody did something bad to me; I can prove it; and now somebody has to

Congratulations!

Three Attorneys Named to 2020 Texas Super Lawyers List

THREE FLETCHER FARLEY ATTORNEYS NAMED
TO THE 2020 TEXAS SUPER LAWYERS LIST



We are proud to announce the selection of [Doug Fletcher](#), [Joanna Salinas](#) and [Steven Springer](#) to the 2020 Texas Super Lawyers list. This is an exclusive list, recognizing no more than five percent of attorneys in Texas. To read more, please [click here](#).

Halloween Fun

We hope you were able to enjoy Halloween. It was different this year, just like everything else has been. We had some socially distanced fun at the firm, decorating pumpkins and dressing up. See some of the fun below:

pay. They find a lawyer, they file a lawsuit, defense counsel files an answer, and discovery begins—we're off to the proverbial races. It's a familiar pattern, and plaintiffs often expect it to apply across the board, including when they make claims against contractors for property damage to their homes. However, for residential property damage cases, it is frequently not that simple. In Texas, property damage to a single-family residence (along with certain multi-family units) or its appurtenances that occurred as a result of constructing a new residence *or even repairing an existing residence* can fall within the ambit of the Residential Construction Liability Act ("RCLA"). In addition to standard construction defects, damages arising during remodels, pool installations, and even some fire losses all have the potential to implicate this Act. RCLA has some important provisions that influence the early handling of claims and the ultimate recovery available to plaintiffs. You may not see these cases every day, but when you do, understanding some basics about RCLA, its requirements and protections, can place you a step ahead of the plaintiff.



The Legislature originally enacted RCLA in 1989. The intent was to provide a more structured dispute resolution process for what was perceived to be an increase in litigation surrounding new home construction defect claims. Over the years, RCLA has undergone a number of changes, but currently, the Act states that it applies to "any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, wrongful death or damage to goods." A construction defect is defined to include basically any matter concerning design, construction or repair of a new or existing residence. Primarily, the Act is implicated in situations where new homeowners are unhappy with the construction quality of their new house and want to sue the builder. While it may seem like a niche field, the Act is arguably broad enough to cover claims for property damage resulting from renovations and repairs to existing residences as well. When you see claims where a homeowner is alleging property damage to their home because of the actions of a contractor, it is worth pausing to determine whether RCLA applies.

RCLA offers several benefits for contractors defending against these types of claims. One of the core features of RCLA is its set of notice provisions. By way of example, claimants are required to provide written notice by certified mail to the contractor 60 days in advance of filing suit, specifying in reasonable detail the nature of the defect or damage and providing any expert reports or other evidence in support. The claimant then must allow the contractor an opportunity to inspect the alleged defect



In the picture above, we have our 3 costume winners. On the left we have Tal Ellis as the Grieving Widow, in the middle we have Pam Mitchell as Little Red Raccoon and, finally, to the right we have Meredith Livermore as Sparky the Firewoman.



Pumpkin Contest



Our staff is very creative! Our pumpkins winners above are: *Resistance is Futile* by Cindy Beall, *Delicious Doughnuts* by Zoe Christopherson and *The Wicked Witch of Central Texas* by Morgan Wortham.

Subscribe to our
Newsletter!

If you want more information or have questions, please contact:

or damage. When these provisions are not complied with, a contractor defendant may move to have the case abated pending compliance with these provisions.

RCLA also contains several limitations on liability and damages in qualifying cases. The Act expressly provides that contractors are not liable for damages caused by the negligence of others, the owner's failure to maintain or mitigate, normal wear and tear, normal settlement, or reliance on inaccurate government records. Damages under the Act are also generally limited to cost of repairs, engineering and consulting fees, necessary temporary housing expenses, reduction in market value, and reasonable attorney's fees. Importantly, since the Act preempts the Texas DTPA, cases falling under RCLA are not subject to awards of treble damages or damages for mental anguish.

For these reasons, it is especially important in residential property damage cases to develop an early understanding of the scope of claims being asserted, the type of work involved, and the substance of the plaintiff's communications with the relevant contractor. As noted, when a claim falls under RCLA, defendant contractors may benefit from a range of limitations on liability and damages, in addition to strict notice requirements that enable more efficient investigation of claims. This is just a brief sample of the types of issues that can arise in these sorts of cases. In practice, litigating RCLA cases can be complex, and there are a number of outstanding legal issues surrounding applicability that Texas courts have yet to provide guidance on. Still, by remaining generally aware of RCLA, its requirements, and benefits, you will be a step ahead of many plaintiffs bringing residential property damage claims. As always, we stand ready to assist in assessing and defending these claims.

Conflicts Resolved

Dallas Court of Appeals Affirms Summary Judgments for Fletcher Farley Clients

In the spring of 2019, [Julia Sinor](#) and [Lorin Subar](#) obtained summary judgments for three national clients in a case where the Plaintiff had alleged that she was assaulted by a contractor sent to her home. The Dallas Court of Appeals affirmed the summary judgments. The opinion handed down by the appellate court is significant in a number of respects. First, the Court reaffirmed prior holdings that generally an employer cannot be liable for the intentional torts of its employees. Second, the Court held that an employer cannot be liable merely because it has policies against and trains its employees not to commit bad acts. Finally, the Court again emphasized that employers can help shield themselves from liability by conducting background checks of prospective

Doug Fletcher
Firm Managing Partner
214-987-9600

[Doug's email](#)

Joanna Salinas
Austin Office Managing
Partner
512-476-5300

[Joanna's email](#)



We are thankful to have clients and friends like you and for the trust you put in us. Being able to work with you is something we are truly grateful for.

employees. The Court noted that the employer in the present matter had conducted a third-party background check prior to employment that did not raise any red flags, and there had not been complaints about the employee or other behavior indicating he would commit an assault. Therefore, the later bad acts by the employee were not reasonably foreseeable. The opinion in *Harris v. MasTec North America, Inc.*, 2020 WL 6305028 (Tex. App.—Dallas Oct. 28, 2020, no pet. h.), can be found by [clicking here](#).

Fletcher Farley Shipman & Salinas LLP

fletcherfarley.com

Contact Us

