

# He'll Build a GREAT Wall: Architect Avoids Public Nuisance Claim

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In *Fisk v. Town of Redding*, 138 A.3d 410 (Conn. App. 2016), the Connecticut Court of Appeals decided a plaintiff injured after a fall from a wall could not maintain a public nuisance claim against the architect who designed the project.

The plaintiff fell from a retaining wall built as part of a bigger municipal project. The lawsuit named the architect, contractor, and Town of Redding as defendants. The plaintiff sought recovery against the architect on a theory of public nuisance. Generally, this type of claim focuses on a physical condition—unlike negligence claims, which focus on someone's act or omission. For individuals who do not own the property in question, nuisance liability turns on whether their "use" of the property amounts to an exercise of "control."

In this case, the architect was hired by the Town of Redding to design, engineer, inspect, and supervise the project. The plaintiff alleged the architect's design and inspection duties constituted "control" over the project site.

The architect said "not so fast" (in not so many words) and filed a motion for summary judgment, arguing he was not in control of the project and therefore could not be liable under a nuisance theory. Both the trial court and the appellate court agreed.

## *The Appellate Court's Analysis*

In deciding the case, the court acknowledged that (1) the architect's contract required him to inspect the site; (2) he was subject to the town's supervision; (3) he was required to relay the town's orders to the contractor; (4) the contractor was responsible for site safety, maintenance, and operation during construction; and (5) the architect's design of the retaining wall was subject to the control of the contractor or the town. Importantly, there was nothing to indicate the architect had controlling authority over the retaining wall at the time of the accident. Lacking control, he could not be held liable under a nuisance theory (which—again—turns on control of the property at issue).

## *What Went Wrong?*

In the end, the plaintiff apparently pursued the wrong legal theory against the architect. When alleging defective architectural services, professional negligence is the legal theory typically pursued.

This case provides a refresher on nuisance claims, and demonstrates how an attorney experienced in the field of professional negligence can defend his or her client's interests.

**By Jasna Dubo**

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