

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50638

Summary Calendar

TWIN CITY FIRE INSURANCE COMPANY

Plaintiff - Counter Defendant - Appellee

v.

URBAN ELECTRICAL SERVICES, INC; ET AL

Defendants

URBAN ELECTRICAL SERVICES, INC;

Defendant - Appellant

OLD REPUBLIC INSURANCE COMPANY

Defendant - Counter Claimant - Appellant

Appeal from the United States District Court
for the Western District of Texas
C.A. No. A 01-CA-319-SS

January 15, 2003

Before KING, Chief Judge, and SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Urban Electrical Services, Inc. ("Urban") and Old Republic Insurance Company ("ORIC"), appeal the district court's grant of summary judgment to Twin City Insurance Company ("Twin City") and the denial of their summary judgment motion. On appeal, Urban and ORIC raise the same substantive arguments that they articulated before the district court, namely (1) that the 1995 Contractor's Proposal and specifically, its indemnifications provisions, do not apply to the Sundance Project; and (2) that the indemnification provisions are unenforceable under the Texas "fair notice" standard because they fail both the conspicuousness requirement and the express negligence rule.

For the reasons provided by the district court, the grant of Twin City's summary judgment motion and the denial of Urban and ORIC's summary judgment motion were both appropriate. Because the 1995 Contractor's Proposal does indeed apply to the Sundance Project and the indemnification provisions are sufficiently enforceable under Texas law, it is unnecessary to evaluate Urban and ORIC's third issue for appeal, i.e., whether the district court erred in failing to award to ORIC all or a portion of its overpayment in the wrongful death settlement.

AFFIRMED.