

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

04-887

BEAU MEYNARD, JR.

VERSUS

PICKETT INDUSTRIES, INC.

COOKS, J., dissents.

I disagree with the result reached by the majority opinion dismissing the City of Alexander on a motion for summary judgment. The majority opinion holds the City had no custody and control of the easement and no knowledge of the presence of the rebar on the site and therefore no cause of action can be maintained against it. The City was the owner of the easement and contracted with Pickett Industries to perform drainage improvements on the property. When the City invited Pickett Industries onto the property, as owner, it did not relinquish legal custody and control, rather the City exercised its custody and control of the area. Moreover, while the City might not have had specific knowledge of the presence of rebar, it certainly had knowledge of the fact that the area was a construction site. To the extent the City is found liable for the negligence of the contractor, its legal recourse is to seek indemnification from the third party tortfeasor as provided in the contract which is typically secured by a bond. The City has a responsibility to contract with a reputable company to perform the work and cannot abdicate its primary legal obligation to the landowner. For that reason, I would not have granted the summary judgment in favor of the City of Alexandria.