

Trends in Construction Defect Litigation: High-Rise HOAs Play for High Stakes

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Construction defect litigation has been pervasive in California for some years now. Individual cases can involve millions of dollars in claims, and whether anyone has standing to collect certain damages is often an issue that has significant impact on the size and value of a case. Nowhere is this more true than in high-rise construction defect cases.

The most common type of high-rise construction defect litigation involves a common interest homeowners association (commonly referred to as an HOA) initiating litigation. California law allows an HOA to act as the plaintiff in matters pertaining to: 1) damage to common areas; 2) damage to a separate interest that the association is obligated to maintain or repair; or, 3) damage to a separate interest resulting from damage to areas falling under one of the prior two options. Sounds simple enough? Maybe, if you have a case with a clearly written set of Covenants, Conditions and Restrictions (commonly referred to as CC&Rs) and litigation only involving damage to common areas. Maybe not so simple if the CC&Rs are vague and ambiguous—which is typical—and an aggressive HOA that initiates a full-blown construction defect action involving every component of the building. In this case, counsel for the HOA will argue strenuously that all the damage alleged is integrally related to damage to the common area (option 3 above) and thus gives the HOA standing to pursue all of the alleged defect issues.

In such a case, the CC&Rs need to be thoroughly analyzed for clarification. The CC&Rs will usually provide a definition of the “common area,” which is sometimes interpreted to be incredibly broad. In one recent WFB&M case, the “common area” was defined as the entire common interest development except for the “Living Units.” A “Living Unit” was later defined as an interest in space with boundaries being the interior surfaces of the perimeter walls, flooring, ceilings, windows and doors, excluding bearing walls, columns, floors, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installations. In essence, anything that an individual tenant could not see from the inside of his or her abode could be subject to a construction defect suit. Given that attorneys must analyze what is, what is not, and what may be, integrally related to damage to common areas, these particular CC&Rs left considerable room for argument on both sides. Using a tile shower as an example of the potential complexity of the issue, one would need to determine whether the shower was located on a bearing wall or perimeter wall. If the shower was along a bearing wall, where does the HOA’s

standing start and stop? Does the HOA have standing to pursue claims for damages: To the framing? To the tile backer board? To the tile adhesive? To the tile? Or, to the tile grout?

So where does all this uncertainty leave the defense? If agreement with the HOA regarding disputed issues cannot be obtained, court intervention is necessary and appropriate. Strategies for limiting the scope of issues that the HOA has standing to assert (and, therefore, limiting the damages recoverable) include summary judgment motions, motions for summary adjudication and a motion to bifurcate trial or conduct a preliminary trial, so that the court can resolve legal issues before the case proceeds to a jury decision.

For more information on high-rise construction defect litigation, please feel free to contact Daniel R. Jacobs of the WFB&M Orange County Office at djacobs@wfbm.com, (714) 634-2522, or any WFB&M attorney with whom you have a working relationship.