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PROCEDURAL REQUIREMENTS OF CALIFORNIA'S "FIX IT" LAW UPHELD

Standard Pacific Corporation v. Superior Court of San Bernardino (Garlow) (2009) ___ Cal. App. 4th ____
(Aug. 14, 2009, No. E046844)

By [James Pugh](#)

The Fourth District Court of Appeal recently held that construction-defect plaintiffs must provide developers with notice and an opportunity to repair before filing suit. This holding in *Standard Pacific Corporation v. Superior Court of San Bernardino* (Garlow) confirms the procedural requirement of Senate Bill 800, which is also known as the “Fix It Law.”

In this case, a group of homeowners (i.e., Garlow et al., as the real parties in interest) filed an action stating causes for strict liability, strict products liability, negligence and negligence per se based on the alleged faulty construction of homes within a Standard Pacific development. Unfortunately for the homeowners, their attempt to by-pass the Fix It Law’s pre-litigation procedures did not pass muster with the court.

The Section 910 of the Fix It Law requires claimants to provide a developer with written notice and an opportunity to repair before marching into court. In turn, Section 912 sets out certain requirements for developers regarding documentation and information to be provided to homeowners. Here, the homeowners simply argued that they did not have to follow the pre-litigation procedures because the developer had not complied with Section 912. The homeowners’ assertion, however, was not supported by any factual showing that the developer had, in fact, breached any of its obligations.

The court quickly turned to the intent of the Fix It Law and concluded that it was designed to avoid costly construction-defect litigation and provide balanced rights and responsibilities for developers and homeowners alike. Importantly, the court determined that the homeowner’s specific responsibility to provide “notice and opportunity to repair” before filing suit was the “norm” and legislative intent of the Fix It Law. The court gingerly avoid calling that responsibility mandatory and implied that a homeowner could potentially by-pass the procedural requirements of Section 910, but must first bear the burden of showing that they need not follow those procedures. Garlow failed to carry that burden.

Accordingly, the court concluded that “[i]f a homeowner files suit without having followed the pre-litigation procedures, it is incumbent upon the homeowner to factually establish that he has been ‘released’ from this obligation due to the builders failure to comply with section 912.” To avoid a potentially unfair result, the court directed the trial court to rehear the case and grant Standard Pacific’s motion to stay the proceedings unless Garlow could prove that the developer violated Section 912. In other words, the court dealt the homeowners a blow, but allowed them to live another day under its clarified interpretation of the Fix It Law’s pre-litigation procedural requirements.

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