

Ground Up

By Christina Landers, Los Angeles Daily Journal

A homeowners' association wins a settlement against a developer and general contractor for their alleged failure to repair defects that caused tilting floors, leaky roofs and rotting decks.

November 21, 2001 - Even in Los Angeles, where the earth below the city is moving constantly, homeowners don't expect the floors of their homes to tilt, especially not within 10 years of construction.

But that is precisely what happened to some of the residents of Los Angeles' Selby Regency condominium complex. And other construction problems, such as leaking roofs, deteriorating interior drywall and water intrusion through windows and sliding glass doors, developed just a few years after the high-end building went up.

"You could practically roll a ball from one side of the room to the other simply by setting it on one end of the room and letting it go," plaintiffs' counsel Thomas E. Miller says of the sloping floors.

After months of enduring leaks and other problems seemingly related to construction defects, the Selby Regency Homeowners Association initiated a suit against the condominiums developer Selby Regency Investments, and its general contractor, Zamin Construction Co.

Board President Rick Davis brought Thomas Miller of Newport Beach's The Miller Law Firm on board to lead the charge against the developer.

Miller and several experts examined the property and filed charges against Selby Regency Investments, Zamin Construction and several other defendants on Dec. 17, 1999. Selby Regency Homeowners Assoc. v. Selby Regency Investments Co BC221231. (L.A. Super. Ct., settlement Aug. 30, 2001).

Nearly two years later, and after six months of mediation, Miller and the homeowners association settled with all defendants for \$960,000. This covered damages for 20 units, at \$48,000 per unit.

"[This figure is] well above the industry average," Miller says.

Arlene Colorado of Encino's Gray, York and Duffy defended Zamin Construction, and Sharam Maghame and J. George Gold of Century City's Law Offices of Maghame & Mahbobian represented Selby Regency Investments.

Both defense firms declined comment on the matter pending finalization of the settlement

agreement. Colman anticipates that will take place by the end of November.

Leaky Roofs, Rotted Wood

The homeowners association's board of directors is responsible for repairing problems in the structure's common area. Common areas comprise all areas except the space within individual condominium units.

As the building's problems escalated, the association needed to initiate suit before the state's 10-year statute of limitations on construction defect claims ran out.

Parties have 10 years from the date of completion of the residential housing development in California in which to file suit against the developer.

According to Davis, the association knew it had a case when Miller's experts examined the 20-unit building, circa 1994.

"We saw the damage and decided it was extensive, and substantial enough to fight in court," Miller says.

In the fall of 1999, Miller notified the developer, Selby Regency Investments, of the homeowners association's intent to file a lawsuit.

"Selby Regency Investments never responded," he says.

The experts he employed include structural engineer Carl Josephson, architectural consultant Chris Allen, geotechnical consultant Glenn Tofani and Steve McCormick, a cost estimator for the construction company.

"After we did our inspection of this particular complex, we found some unique problems, with a higher than usual cost to repair them all," Miller says.

Some of the most serious problems included structural deflection, which caused floors to slope to one side.

"[This becomes apparent when the units' floors] are way out of whack," Miller says.

The experts found that some early soil settlement had occurred as a result of excavation of the lot.

"The builders did not compact the soil properly, and as a result, it was settling early and unevenly," he says. "It was causing homeowners grief because they were looking at their floors, which slanted downhill."

Problems included some integral structural members in the building.

"Wood framing members on a building are structural pieces that can expand, contract, shift and deflect if not properly treated," Miller says.

And they did precisely that at the Selby Regency condominiums.

Some roofs were leaking, water was not draining properly, and after a rain, the building's decks were staining its stucco walls.

"That staining usually means there's water inside the decks," Miller says, "so we pulled one deck apart and found that it had started to dry rot inside--something it should not do for many years, if ever."

Miller says this was significant to the ultimate disposition of the case.

"These problems raised the ante on settlement" Miller says, because of the extensive damages the defense might face.

Six Months of Settling

"Initial mediation efforts were difficult because the developer [Selby Regency Investments] was uninsured," Miller says. "It's very unusual that a developer should be uninsured, but that was the case."

So Miller sought other sources of funds.

"Fortunately, the general contractor, Zamin Construction, had insurance, but only one policy of \$1 million, that expired before this condominium complex was complete," Miller says.

The lack of insurance hampered initial mediation efforts with George Calkins, a partner with Los Angeles' Cox Castle & Nicholson. Calkins, who was appointed by the court as the discovery referee and mediator for the case, practices real estate and construction law. He has served for 12 years as a construction arbitrator and mediator, presiding at more than 150 arbitrations or mediations.

"We got to the point where we achieved a sort of platform for negotiations," Calkins says. "Part of the challenge was finding who had potential liability insurance; and there were some pretty dramatic construction problems: leaks in decks and adjacent walls, and so on."

Miller says that, after becoming frustrated with months of unproductive informal mediations, he called for Los Angeles superior Court Judge Peter Lichtman to set a mandatory settlement conference.

"I knew [Lichtman] could command the respect of all parties," Miller says.

The defense attorneys, Calkins and Lichtman agreed to the arrangement, and on Aug. 30,

2001, the matter settled.

"We argued our point using the experts' opinions and evidence," Miller says.

But it wasn't an easy negotiation.

"We narrowed the settlement amount to somewhere between \$900,000 and \$1 million," Miller says.

According to Miller, the standard per-unit payout in cases similar to the Selby matter is in the \$20,000 to \$25,000 range. The Selby Regency settlement was larger than usual - \$48,000 per unit for the building's 20 units - because of the extensive damage.

"There was the structural problem, an unusual issue that we don't usually see in condominium developments, and because of that, the plaintiffs needed a large settlement to repair the damage it caused," Miller says.

According to Calkins, all of the settlement money will be needed to fix the construction defects.

"Nobody runs away from a case like this and buys boats or jet skis," Calkins says.

Judge Carolyn Kuhl entered the settlement into the record on Sept. 28.