

Association Settles Suit Against Builder Over Defects

Nellene Teubner, Aliso Viejo News

March 6, 1997 - When the rains poured during past winters, the water damage followed The Montelena condominiums in Aliso Viejo.

Water penetrated balcony decks, seeped through the roofs and leaked through window casements in the complex at the corner of Glenhurst and Aliso Creek Road.

In 1995, the homeowners had enough. On July 28 that year, The Montelena at Aliso Viejo Homeowners Association filed suit against its builder, LDM Development.

The company was based in Laguna Niguel but is no longer in business. The association was represented by Newport Beach attorney Thomas E. Miller.

Last week the association received a \$4.2 million settlement for construction defects in 126 condominium units.

"We're very pleased at the timely settlement and we look forward to correcting the outstanding issues," said Kevin Semon, the homeowners association president. "I feel the association will be substantially improved from what it was originally because of updated technologies and materials."

Miller said to get the case settled in 19 months is extraordinary. He attributed it to mediation.

"This didn't drag on for years," he said. "Homeowners aren't hampered by not being able to sell their unit or refinance."

Miller said initially Merit Property Management Co., representing The Montelena, approached his office with homeowners' complaints.

"We talked about what their options might be in light of the fact the developer was going out of business and might not be in a financial position to make repairs," Miller said. "We have a licensed, general contractor on staff who went out and took a look to find out if the complaints were valid or if there was evidence of building code violations."

After the board hired Miller, his office spent 60 to 90 days evaluating the case to make sure there was no statute of limitations or prior releases. He said it looked like a clean bill of health.

"One thing we did up front was look at LDM and find out they are insured, even though they're out of business," Miller said. "The last thing you want is to go through a lawsuit and get a paper judgment."

This is the second case that Miller's law office has settled against LDM within the last 20 months. The first one was on behalf of a homeowners association in Corona.

Miller said he believes every new home development is "suspect" in terms of construction defects.

"I'd say you have about a 50-percent chance of some form of construction defect," he said. "It's a very high percentage because they don't build them (homes) like they used to."

Two things contribute heavily to the defects, according to Miller:

1. The use of unskilled labor. Labor unions used to provide skills laborers who knew how to build homes, he said.
2. Money. Miller said that builders are driven by the bottom line. "You don't find the family owned builders," he said. "Now they're publicly traded and bigger doesn't mean better."