

AAS vs. The William Lyon Company Courts Curtails Construction Defect Claims

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August/September 1998 - In a shocking June 11 decision, the 4th District Court of Appeal in San Diego held that homeowners' and associations' recovery against builders and their insurance companies over construction defects will now be limited to claims that have caused actual property damage or personal injury. In the case of *Aas vs. Superior Court* (The William Lyon Company), the court held that other "economic damages" would not be recoverable under a negligence theory. This means that homeowners and associations can no longer recover the cost of repairing structural problems in homes until physical damage occurs.

Economic damages include items such as lack of firewalls, improper shear walls, faulty electrical wiring and the like. According to the court, costs to repair such deficiencies are not recoverable by homeowners unless a fire, earthquake or other catastrophic event results in significant damage to the buildings or building occupants sustain serious injury. In other words, buildings with improper firewalls would have to catch fire and threaten the lives of families before repair costs could be recovered.

The *Aas* decision involved a group of single-family homeowners who sued The William Lyon Company over a number of construction defects. Also involved in this case was Provençal Community Association, a 162-unit condominium project. By a motion at the time of trial, evidence was excluded and both the single-family homeowners and the condominium development were barred from recovering economic damages.

In so ruling, the *Aas* court refused to follow a prior decision from another California appellate district (*Huang vs. Garner*), which held that these economic damages were recoverable by homeowners in a construction defect case.

This split of authority, with the San Diego court refusing to follow the precedent set by the *Huang* ruling, makes this case ripe for review by the California Supreme Court.

If the Supreme Court takes this case up for review, it will certainly need to analyze the following effects of the *Aas* decision.

Duties to repair and maintain common areas

Associations are required to repair and maintain common areas. (Cal. Civ. Code §1364.) If an association investigates other claims and finds defects that have not manifested in any physical damage, the association will be stuck with the cost of fixing the problems. They may have nowhere to turn for funding except, perhaps, to borrow the money or impose a special assessment.

10-year statute of limitations

Associations and homeowners have only 10 years from the date of substantial completion of a project to recover damages from the builder. (Cal. Code of Civil Procedure §337.15.) If a project was built with no firewalls or improper shear walls, and a fire or earthquake results in physical damage after the tenth year, the association and homeowners are forever barred from recovering any damages from the builder.

This increases the likelihood that multiple cases will be filed by homeowners and associations each time physical damage occurs. For example, a lawsuit for many serious defects at the project could be followed by the filing of additional suits after each instance of physical damage, such as a landslide, fire or structural components failure.

A serious look at the effect on damage claims beyond California's current -10-year limit will also have to be considered.

Precedent Ignored

The court seemed to ignore the interest of the homeowners, leaving literally hundreds of associations with claims now pending in California courts in a state of shock as a result of this unanticipated decision. However, if the Supreme Court takes this matter for review, then the *Aas* case will not be published and will not be of any further precedent until the Supreme Court makes its decision.

If the Supreme Court refuses to accept the case, then it will likely be published, which means that it will have legal precedent and must be followed by the courts, at least those in San Diego County that surround the 4th District Court of Appeal.

But with the split of authority, each of the other appellate districts in the state would be free to ignore the 4th District's ruling and follow that of the case of *Huang vs. Garner*, a 1st District Court of Appeal case. (157 Cal.App.3d 404(1984))

The Next Step

One possible way to attack this problem is to introduce legislation that would better define the nature of a construction defect and include such items as lack of firewalls between units, structural failures and Uniform Building Code violations. This however, may take months and will require the support of the community association industry and the state's consumer attorneys.

Errors & Omissions Claims Intact

The court did leave intact a claim for errors and omissions (malpractice) against design professionals such as architects and engineers. Defective plans often lead general contractors and subcontractors into making mistakes in the field.

Nevertheless. If an association or homeowner uncovers building code violations and even if the violations rise to the level of life-safety problems there is no recourse until injury or physical damage occurs, even though the companies insuring builders have been paying for these types of claims for the last two decades.

This decision will represent an extreme hardship if homeowners have to come out-of-pocket to finance repairs.