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California Supreme Court Finds that Homeowners Associations Can Hold Architects & Engineers Responsible for Defects

By Thomas E. Miller & Rachel M. Miller
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The highest court in the State has found that architects who design condominium projects in California are responsible to condominium owners and their associations for design flaws resulting in building standard violations and construction defects.

In *Beacon HOA v. Skidmore, Ownings & Merrill,* S208173 (2014), the homeowners association of a 595 unit San Franciscan condominium development sued architectural and engineering design professionals for construction defects that caused extreme indoor temperatures as a result of solar heat gain and rendered the condominiums unsafe to inhabit. The solar heat gain, alleged the association, was due to the architectural firm's approval of less expensive, substandard windows, contrary to state and local building codes; in addition to designing a building that lacked adequate ventilation.

The issue before the Supreme Court was whether the Association could also sue HKS Inc. and Skidmore, Owings & Merrill, the architectural firms which were paid more than $5 million for their work.

Relying on its exclusive agreement with the developer, the architects argued there was no duty of care owed to the HOA. They claimed that the HOA was a third party to the contract and the scope of its contract was between the developer and architect. The HOA asserted that the defendant architectural firm had undertaken the project work with the full knowledge that the finished construction would be sold as condominiums and used as residences.

The *Beacon* Court noted that third party beneficiaries, or HOA's in defect claims, may possess the rights of parties to a contract, which does not exempted the architect from the duty of care.

Applying the case of *Biankanja v. Irving*, 49 Cal.2d 647 (1958), the high court articulated the factors that must be considered in determining a duty of care exists in the absence of a direct relationship or privity between the parties. The *Biankanja* factors are as follows: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury suffered; (5) the moral blame attached to the defendant's conduct; and (6) the policy of preventing future harm.

In the context of construction defect damages, the *Beacon* court reiterated that where design professionals perform faulty work but are contractually obligated only to a developer, HOAs can also sue the design professionals under the provisions of the Right to Repair Act, SB 800 et seq., if the HOA can establish that a duty of care exists by utilizing the *Biankanja* factors.

In response to this decision, Tom Miller, CEO & Founder of The Miller Law Firm, states, "After 35 years of specializing in construction defect claims in California, our homeowner association clients deserve the relief The Court has provided in this landmark decision. Oftentimes, and particularly after the 2008 real estate crash, homeowners associations with serious defects find their claims are encumbered by bankrupt entities and shell limited liability companies or 'LLCs' with extremely limited insurance. Consumers now have the right to pursue claims for defects against those who designed as well as those who built their homes."

Thomas E. Miller and Rachel M. Miller of The Miller Law Firm (www.ConstructionDefects.com) are the co-authors of, "Home and Condo Defects: A Consumer Guide to Faulty Construction," (Seven Locks Press, 2012), available online at www.amazon.com.