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Alerts

California Supreme Court Finds that Architect has a Duty of Care that Extends to Future Purchasers of Condominiums

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Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP, Slip Opinion S208173 (July 3, 2014).

Defendants were two architectural firms that provided architectural and engineering services for a large residential condominium project containing 595 units in San Francisco. The defendants were the only architects on the project and not only provided design services at the outset of the project, but also performed weekly inspections at the construction site, monitored contractor compliance with the design plans, altered the design requirements as issues arose, and advised the owner of any non-conforming work that should be rejected. The defendants charged a fee of more than $5 million for these construction related services. Although the units were rented out for two years after construction, the defendants had knowledge that it was the intent of the owner to sell these units as condominiums. Before construction began, a condominium covenant was recorded and a condominium association was formed. Plaintiff homeowners association brought an action against the developers as well as the defendants alleging negligent architectural design work which resulted in several defects in the building including: extensive water infiltration, inadequate fire separations, structural cracks and other safety hazards. One of the principal defects they claimed was "solar heat gain" which made the units uninhabitable during certain periods of the day due to high temperatures. Specifically plaintiff brought claims against the two architectural firms under Civil Code Title 7 Violation of Statutory Building Standards for original construction, for negligence *per se* in violation of a statute, and for negligence by design professionals and contractors. The trial court granted a demurrer in favor of the defendants reasoning that an architect who makes recommendations, but not final decisions on construction, owes no duty of care to future homeowners with whom it has no contractual relationship. The Court of Appeals reversed concluding that an architect owes a duty of care to homeowners in those circumstances under both the common law and under the California Right to Repair Act (Civil Code Section 895, *et seq*). The California Supreme Court affirmed the Court of Appeals.

Question Before the Court and How the Court Ruled

Service Areas

Architects & Engineers Liability

Professional Liability

Does an architect owe a duty of care to future homeowners in the design of a residential building where the architect is a principal architect on the project but they do not build the project or exercise ultimate control over construction?

Yes. Although the court found that this was an issue that had not previously been decided by this court, there are a variety of circumstances where builders, contractors and architects owe a duty of care to third persons. Architectural liability to third persons has been allowed in both personal injury and property damage cases for defective design that violated building code standards. The California Right to Repair Act also established a set of building standards for new residential construction that builders and other entities would be liable for violation of such standards. Although the Court of Appeals concluded that the Right to Repair Act was dispositive of the scope of the duty owed by the defendants, the Supreme Court held architects owe a common law duty of care to future homeowners where the architect is the principal architect on the project, provides the professional design services and is not subordinate to any other design professionals. The duty of care extends to such architects even when they do not actually build the project or exercise ultimate control over construction.

The court relied primarily upon *Bily v. Arthur Young & Co.*, 3 Cal.4th 370 (1992) an action brought by investors in a computer company against an auditor that issued an audit report and financial statements in finding the existence of a common law duty to third persons based on three considerations: (1) the closeness of the connection between defendants' conduct and plaintiff's injuries; (2) the limited and wholly evident class of persons and transactions that defendants' conduct was intended to affect; and (3) the absence of private ordering options that would more efficiently protect homeowners from design defects and their resulting harms. The Supreme Court emphasized that the defendants here owed a duty because they were the principal architects on the project and were not subordinate to any other design professionals. Even if an architect does not actually build the project or make final decisions on construction, a property owner typically employs an architect in order to rely on the architect's specialized training, technical expertise and professional judgment as defined in the Business and Professional Code Section governing the practice of architecture. (Bus. & Prof. Code Section 5500.1 *et seq.*) The defendants as the principal architects on the project possessed architectural expertise that the owner did not have and they exercised professional judgment on architectural issues such as adequate ventilation or code compliance windows. Because the defendants here were involved in inspections and monitoring of contractor compliance, they applied their specialized skill and professional judgment throughout the construction process to insure that it would proceed according to approved designs.

The court rejected the defendants' claims that the connection between any of their conduct and the plaintiff's injury was attenuated and when the developer sold the units being aware of and concealing the alleged defects. The court found that the developer's alleged misdeeds were derivative of the defendants' negligent conduct and did not diminish the closeness of the connection between the defendants' conduct and the plaintiff's injury. The court also rejected arguments by the defendants that the court's finding of a duty of care to future homeowners raised the prospect of liability in an indeterminate amount for an indeterminate time to an indeterminate class. Citing to *Ultramares Corp. v. Touch*, (N.Y. 1931) 147 N.E. 441. The court found that the defendants' work on the project was intended to affect the plaintiff and the aim of the transaction was to provide safe and habitable residences for future homeowners that were a specific, foreseeable and well-defined class. Citing to *Biakanja v. Irving*, (1958) 49 Cal.2d 647. The court noted that the defendants could limit their liability in proportion to their fault through an action for equitable indemnification.

The court also rejected the defendants' argument that their contract with the developer expressly disclaimed the existence of any third-party beneficiary of the obligations contained in the contract. Once again citing to *Bily*, the court found that the lack of third-party beneficiary status would not preclude liability in tort and the contract provision emphasized the fact that the defendants were well aware that future homeowners would necessarily be affected by their work. Finally, the court rejected defendants' contention that the plaintiff had options for redress within the bounds of privity by seeking an assignment of the developer's rights or could pursue a design defect case against the developer which might in turn seek redress from the defendants. The court stated that it was questionable whether this more attenuated form of liability would provide adequate redress and that a rule holding architects as independent professionals directly accountable to third-party homeowners was more likely to vindicate that interest. The court declined to impose a rule that placed the onus on homeowners to employ their own architects to fully investigate a structure as it did not seem to be more efficient than a rule that makes architects who design the homes directly responsible to the home buyers. The court concluded citing *Biakanja* that the (1) defendants' work was intended to benefit the homeowners living in residential units that the defendants' designed and helped to construct; (2) it was foreseeable that the homeowners would be among the limited

class of persons harmed by the negligently designed units; (3) plaintiff's members had suffered injury and the design defects made their homes unsafe and uninhabitable during certain periods; (4) in light of defendants' role as the sole architects on the project, there is a close connection between defendants' conduct and the injuries suffered; (5) because of defendants' unique and well-compensated role in the project as well as their awareness that future homeowners would rely on their specialized expertise in designing safe and habitable homes, significant moral blame attached to defendants' conduct; and (6) the policy of preventing future homeowners' reliant on architects specialized skills support recognition of a duty of care. The court distinguished the case of *Weseloh Family Ltd. Partnership v. K.L. Wessel Construction Co., Inc.,* (2004) 125 Cal. App.4th 152, relied upon by the trial court in granting the demurrer where the defendant engineer had a limited role in the construction project and merely prepared a set of earth retention calculations and did not apply their expertise to designing the project or to insure that construction conformed to approved designs. The defendants in this case, according to the complaint, approved the use of defective windows and designed a defective ventilation system, all of which created conditions that made the homes uninhabitable for portions of the year and established a causal link between defendant's negligence and plaintiff's injury.

What the Court's Decision Means for Practitioners

The California Supreme Court by this opinion has held that a principal design architect, who has no role in actual construction, can be held liable to subsequent purchasers for design defects. In other jurisdictions where the judicially created doctrine known as "the implied warranty of habitability" exists, the warranty has not been extended to architects. Courts in other jurisdictions have also been loath to extend an architect's liability under the implied warranty theory. It is also interesting to note that the economic loss doctrine was not discussed. In other jurisdictions, the economic loss doctrine would have been raised as a defense barring this complaint by subsequent homeowners for purely economic losses.

For more information, please contact your regular Hinshaw attorney.

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