

NEWSLETTERS

California Expands Liability For Architects -- Duty Of Care Owed To Third-Party Condo Buyers

April 17, 2015

Note: This article appears in the Spring 2015 edition of Barnes & Thornburg LLP's *Construction Law Update* e-newsletter.

The California Supreme Court has expanded the number of parties who can assert claims against architects. In *Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP*, 327 P.3d 850; 173 Cal.Rptr.3d 752 (2014), the Supreme Court held that architectural firms owe a duty of care to future homeowners in the design of a residential condominium building even in situations where they do not make the final decisions on construction or exercise ultimate control over construction.

In *Beacon*, the homeowners association sued several parties involved in the construction of condominiums, including several business entities designated as the original owners and developers of the condominium, as well as the architect with whom the owners and developers contracted for architectural services. The plaintiff alleged that negligent design work performed by the architect resulted in several defects, including extensive water infiltration, inadequate fire separations, structural cracks and other safety hazards. One of the principal defects was referred to as "solar heat gain" which made the condominium units uninhabitable and unsafe during hot summer months due to high temperatures. The plaintiff alleged that the solar heat gain is due to defendants' approval, contrary to state and local building codes, of less expensive, substandard windows and a building design that lacked adequate ventilation.

According to the complaint, the architects were paid more than \$5 million for their work on the project which included architecture, landscape architecture, civil engineering, mechanical engineering, structural engineering, soils engineering and electrical engineering as well as construction administration and construction contract management. In sum, defendants played an active role throughout the construction process, coordinating efforts of design and construction teams, conducting weekly site visits and inspections, recommending design revisions as needed and monitoring compliance with design plans.

Because the future homeowners lacked contractual privity with the architectural firm, the threshold issue in *Beacon* focused on the first element of a negligence claim, the duty of care. In analyzing whether a duty of care exists, the Supreme Court looked at cases involving third party liability for property damages caused by the negligence of contractors and subcontractors. For example, in *Stewart v. Cox*, 362 P.2d 345; 13 Cal.Rptr. 521 (1962), the Supreme Court upheld a homeowner's judgment against a subcontractor who negligently applied concrete to the inside of a swimming pool, which resulted in the release of water that damaged the pool, lot and house. Shortly after *Stewart*, the Supreme Court in *Sabella v. Wisler*, 377 P.2d 889; 27 Cal.Rptr. 689 (1963) held that

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a contractor was liable to a homeowner, although the homeowner's identity was unknown at the time of construction, where the contractor built a house on inadequately compacted soil. The key to these cases was foreseeability.

In determining whether a duty of care exists between a future home owner and the architect (where no privity of contract exists), the court considered the following factors:

- (i) The extent to which the transaction was intended to affect the plaintiff
- (ii) The foreseeability of harm
- (iii) The degree of certainty that plaintiff will suffer injury
- (iv) The closeness of the connection between the defendant's conduct and the injury suffered
- (v) The moral blame attached to the defendant's conduct
- (vi) The policy of preventing future harm.

In analyzing these factors, the court in *Beacon* reasoned that the architect's primary role in the design of the project bears a "close connection" to the injury alleged by the plaintiff. Second, recognizing that an architect has a duty of care to future homeowners does not raise the prospect of "liability in an indeterminate amount for an indeterminate time to an indeterminate class." *Id.* at 861. The architectural firm engaged in work on a project with the knowledge that the finished construction would be sold as condominium units to a specified number of future homeowners. As such, the court reasoned that there is no specter of vast numbers of suits and limitless financial exposure.

Finally, the court reasoned that public policy favors the extension of liability to the architectural firm. The typical homebuyer clearly relies upon the skill of the architect and developer and on its implied representation that the house will be erected in a reasonably workmanlike manner and will be reasonably fit for habitation. In reaching its final decision, the court stated:

A liability rule that places the onus on homebuyers to employ their own architects to fully investigate the structure and design of each home they might be interested in purchasing does not seem more efficient than a rule that makes the architects who designed the homes directly responsible to homebuyers for exercising due care in the first place.

Id. at 862. The California Supreme Court's reasoning in *Beacon* underscores the importance for architects to understand and define their role on a construction project. On large condominium projects such as the one in *Beacon*, it is imperative that architects clearly define their scope of liability up front through carefully crafted contracts that anticipate such liability.

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