

Legal Update Newsletter

September

2009

Welcome to the first edition of Silldorf & Levine, LLP's Quarterly Legal Update Newsletter!

We hope this newsletter will provide you with information and updates on recent changes in case law.

If you have questions about the articles or information in our newsletter or you need information regarding legal representation, please contact:

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Future Resident Standing?

Future Residents Do Not Have Standing to Sue Homeowners Association Where Owners Assigned Interest in Causes of Action

The Factual Scenario

In Martin, et. al. v. Bridgeport Community Assoc., Inc. (2009), the Petersons, owners of a home in a community interest development, agreed to allow their daughter and her husband, the Martins, to stay in the home if the Martins paid all the expenses associated with the home. During the construction of the home, however, the Petersons and the Martins noticed the home was smaller than represented in the purchase agreement. The Petersons then assigned all their rights, title, and interest in their causes of action against the homeowners association to the Martins.

The Martins filed suit for both breach and specific performance of an agreement with the homeowners association to meet the square footage represented in the purchase agreement. The Martins also sued for breach of both the Rules and Regulations and CC&Rs of the common interest development. The homeowners association responded by claiming the Martins had no standing to sue because they were not the owners of the home.

The Law

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The Court ruled that ownership interest in the house is a prerequisite to standing to assert a cause of action for violations of rights of the owners of the home. Further, the court ruled that the Martins could not sue to enforce the CC&Rs of the common interest development because, under California Civil Code §§ 1351 and 1354, only owners of a separate interest are entitled to enforce the governing documents.

The trial court's award of attorney's fees and costs to the homeowners association was affirmed because under Civil Code § 1354(c), awarding attorney's fees and costs is mandatory when a plaintiff brings an action to enforce governing documents, but is unsuccessful.

The Lesson

A future resident does not have standing to sue a homeowners association when the owners of the separate interest assigned their rights and interest in their causes of action to the resident. The resident must have an ownership interest in the separate interest to have standing to sue for violations of rights of the owners, including enforcement of the Rules and Regulations and CC&Rs of the common interest development.

Fix It Law Noncompliance

Homeowners Showing Builder's Noncompliance with Disclosure Requirements Releases Obligation to Follow Prelitigation Procedures

Introduction

Civil Code Section 895 (commonly referred to as the "Fix it Law") establishes procedures and requirements for construction defect cases involving homes and homeowners. The Fix it Law requires homeowners to notify builders of claimed defects and give them an opportunity to repair the problems before filing a lawsuit. The law also requires builders to provide homeowners with certain documents and information regarding their homes. If the builder fails to comply with its disclosure requirements, the homeowner is excused from following the prelitigation procedures.

homeowner must factually establish that he has been "released" from this obligation due to the builder's failure to comply with its disclosure obligations. The court found that it was the homeowners' burden to show the builder's noncompliance, and that the homeowners had not met that burden in the case. **WARNING!**

Homeowners and associations are reminded to follow all "Fix it Law" standards including recommended maintenance schedules and practices. Failure to follow reasonable maintenance obligations and schedules, as well as commonly accepted maintenance practices, may subject the homeowner or association to affirmative defenses contained in the Fix it Law. Homeowners and associations should seek the advice of an experienced construction defect attorney to help protect them in navigating the complex rules of the Fix it Law.

Attorney Spotlight - Scott Levine

Scott Levine Files Construction Defect Case for Defective Windows

The law firm of Silldorf & Levine, LLP recently filed a Complaint for Construction Defects in the Superior Court of San Diego County against Davidson Communities, International Window Corporation and other defendants. The Plaintiffs own single-family homes in Meadows Del Mar, a community in the Carmel Valley area of San Diego.

The homes in the Meadows Del Mar development were built by defendant Davidson Communities in 2001. The Complaint in this matter alleges that the homes in the Meadows Del Mar community have defective windows and French doors.

Firm principal Scott Levine plans to focus his investigation on the complete chain of distribution of the window, including the designer and manufacturer of the wood windows (International Aluminum Corporation and International Window) and the window supplier/installer (J&B Manufacturing Corporation). This lawsuit is a second generation window case against these defendants. In 2008 Mr. Levine represented four homeowners in Meadows Del Mar with the same problems. That case was settled after depositions of the manufacturer were completed. The settlement total was significant but confidential at the request of the defendants.

Mr. Levine concentrates his practice representing consumers who have defective windows. He has represented homeowners and associations in construction defect cases since 1991.

Testimonials

Did you know that Silldorf & Levine, LLP conducts Lunch & Learns for Community Managers?

Below, is a testimonial from our most recent presentation.....

"It was a great lunch and learn, very informative regarding SB800 (Construction Defects). It seems that we have to stay on top of the condition of our properties and make sure we catch any defects before its too late. The list of defects along with each specific defect's statute of limitation is helpful to know. I also liked when Mr Silldorf emphasized NOT getting an expert (to inspect defects) before consulting with a lawyer...." (Community Manager from JD Richardson)

If you would like us to visit your office, please contact Christina Ciceron, Esq. at (858) 625-3900 ex. 602. We can present on a variety of Community Association and Construction Defect Legal Topics.

About Our Law Firm

Silldorf & Levine, LLP is a boutique civil litigation law firm headquartered in San Diego, California. The attorneys at Silldorf & Levine, LLP have combined legal experience of more than 50 years. During that time, we have successfully represented consumers, individuals, groups of individuals, business owners, entrepreneurs, businesses, homeowners and community associations in a variety of legal matters.

Free Consultation

If you believe you or one of your homeowner association clients has a construction defect, our firm is available to help. Please contact our office at 1-800-811-5874 and ask to speak with Christina Ciceron, Esq.. We are available for a no cost/no obligation site inspection of the property. We also provide a no cost/no obligation follow-up inspection with an expert if warranted in the law firm's opinion. Please be advised that any expert needs to be retained by or under the direction of an attorney and not independently otherwise the information of the expert is not privileged or confidential. If you are a potential client with a potential construction defect that is approaching a statutory deadline, we can prepare a FREE Calderon or SB 800 Notice to stop the running of your statute of limitations. Please call us at 1-800-811-5874. We look forward to assisting you!

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