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LITIGATION FILES

Contractor Wins Suit Against
Association of Homeowners

Calabasas Defendant Strives to Overturn \$7 Million Judgment

By Eron Ben-Yehuda

To have a homeowners' association sued by a general contractor is odd enough. Typically, it's the other way around.

What makes a recent case even more unusual is that a jury awarded the builder about \$7 million, one of the largest verdicts against an association.

If Pasadena defense counsel Craig N. Rossell has his way, though, the decision won't stay in the record books for long.

Rossell filed paperwork last month to have the verdict overturned. A Sept. 13 hearing before Los Angeles County Superior Court Judge Harold I. Cherness will determine whether a new trial is warranted.

Obviously, Los Angeles plaintiffs' attorney David R. Lira, who represents the general contractor, doesn't think so. He charges the association with skipping out on a \$2.4 million bill left from a \$5.7 million project.

To prevail at trial, Lira says he had to overcome a jury's general dislike for contractors. To add to the challenge, the company's owner, who dealt directly with the association, is a lawyer, another profession that society holds in low regard, he says.

But Lira succeeded by pointing out that the association signed an agreement that it failed to honor.

"They sign it. They don't like it. But they don't tell anyone [who works for the builder]," Lira of Girardi & Keese says.

On Jan. 17, 1994, a major earthquake rocked Southern California, with Northridge taking the brunt of it. The tremor also damaged nearby areas, including Calabasas.

The Oak Park Calabasas Homeowners Association felt more than shaken.

The association represents owners of a condominium complex with 268 units in 32 separate buildings, some of which were knocked off their foundations.

Sidewalks, roofs and floors needed repair, Rossell of Hunt Ortman Blasco Palffy & Rossell says.



Photo by Robert Levine

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"There was a ton of cracking of exterior stucco," he adds.

So the association's board shopped around for a contractor and found Robert E. Selan, an attorney and the owner of Reseda-based ECC Construction Inc.

In July 1994, ECC entered into a written contract with Oak Park.

As the work progressed, ECC discovered unforeseen damage that expanded the scope of work, Lira says. Instead of revising the original agreement every time unexpected repairs were needed, ECC's Selan prepared an assignment of insurance proceeds. It entitled ECC to receive payment from State Farm for reimbursement claims without negotiating with the association's board, Lira says.

Three out of the five board members signed off on the assignment in January 1995.

But the defense alleged that Selan used duress and even bribery to manipulate the board to accept the agreement, which the defense characterized as an "absolute carte blanche assignment" of all insurance proceeds. In some instances, ECC demanded payment for work that was not performed, Rossell says.

Selan's experience as a lawyer helped him fool the board into agreeing to the assignment, Rossell says.

"A condominium board is just like Joe, Jack and Marilou," he says. "They aren't sophisticated business types."

And Selan allegedly bribed one of the board members, David Hengstler, who also served as the association's point man on the repair project. Selan arranged for Hengstler's damaged home to receive custom cabinets and the highest quality carpet for free, Rossell says.

Other homeowners referred to Hengstler's place as the Taj Mahal, Rossell says.

Lira denies that Selan engaged in foul play.

Hengstler paid for improvements to his unit, albeit at a discounted rate, Lira says.

ECC substantially completed its work by March 1995. But the board, which held the insurance proceeds in an account, refused to pay the millions of dollars due ECC.

In July 1995, ECC filed suit alleging breach of contract and fraud. One year later, Oak Park countersued, charging ECC with fraud.

After nearly a five-month trial, ECC prevailed.

By talking to the jurors afterward, Lira learned that he had made a big impact on them by pointing out that, after agreeing to the assignment, the board had second thoughts but kept its collective mouth shut.

"If they didn't like the agreement, they should have said so," Lira says. "Instead, they watched [Selan] with a pick and ax doing the work in good faith."

ECC Construction Inc. v. Oak Park Calabasas Homeowners Association, LC032986 (Los Angeles Super. Ct., verdict May 31, 2002).