

Life After *Beacon Residential*: What Design Professionals Need to Know Following Landmark Court Decision

As discussed in our October 2013 newsletter, the California Supreme Court reviewed an Appellate Court ruling that design professionals owed a duty of care to third-party homeowners absent any direct contract. Unfortunately, the Supreme Court upheld the Appellate Court ruling, issuing a unanimous decision on July 3, 2014.

The *Beacon* defendants were the architects for a residential project in San Francisco that was first rented out as apartments and later sold as condominiums.

In the past, Koenig Jacobsen has successfully secured early dismissals for numerous design professionals by arguing they owed no duty of care to parties who did not contract directly with the design professional. We obtained dismissals both at the very early pleading stages and later, based on evidence presented in summary judgment motions.

Although the Supreme Court's decision is unfavorable to design professionals, Koenig Jacobsen believes that the "lack of duty" defense has not yet been completely eradicated. Specifically, factual and legal distinctions survive the decision:

- Role of Design Professional: Principal vs. Subordinate- The *Beacon* Court emphasized the architects role as the "principal" design professional for the residential project. By contrast, the design professional in the *Weseloh* case was a sub-consultant to another design professional. The *Beacon* decision suggests that while a principal design professional's decisions are the final design determination, the decisions of a subordinate design professional typically are in turn reviewed by another design professional.

- Type of Project: Residential vs. Commercial or Public Entity- Although not making an express distinction between types of projects, the *Beacon* Court suggested that the typical residential property owner/developer relies on the design professional's specialized training and technical expertise. An argument can be made that a more sophisticated commercial or public entity property owner/developer may have more adequate resources to make professional judgments.



Located in San Francisco, The Beacon is a 595-unit condominium development. The HOA alleged defects including water infiltration, inadequate fire separations, structural cracks and other safety hazards. In addition, the HOA alleged "solar heat gain" which made the units uninhabitable and unsafe during high temperatures.

- Role of DP During Construction: Active (+ large fee) vs. limited (+ nominal fee) – The subject design professionals on the *Beacon* project played an active role throughout the construction process (including approving design changes) and were paid more than \$5 million. On the other hand, the design professionals on the *Weseloh* project had a limited role in the construction project and were paid only a nominal fee.

Importantly, the *Beacon* case was decided at the demurrer stage when the analysis is confined to the four corners of the pleadings. The *Weseloh* case, by contrast, was determined at the summary judgment stage where the evidence demonstrated the design professional was subordinate to another design professional, had a limited role in construction, and was paid only a nominal fee. As such, the *Beacon* Court cautioned that at the appropriate evidentiary stage, the analysis may weigh in favor of finding no duty of care to a third party, under the appropriate facts.

Regardless, even if a court determines that a design professional owed a duty of care to a third party, other factual and legal defenses remain viable, such as compliance with the standard of care and lack of causation/damages.

Notably, the Supreme Court declined to rule on whether the Right to Repair Act (SB 800) automatically imposes a duty of care on design professionals to future homeowners. As such, the Appellate Court's ruling of the automatic imposition of a duty is superseded by the Supreme Court's common law analysis.

In light of the *Beacon* decision, Koenig Jacobsen has adapted its defense strategy and can advise clients on how to best tailor their contracts to limit claims by third parties. Please contact Randy Koenig or Chad Wilson in the Irvine office (949-756-0700) or Lisa Shemonsky in the San Diego office (619-819-0009) to discuss this matter further or for a copy of the Supreme Court's decision.

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