

BURDMAN & WARD

ATTORNEYS AT LAW

Construction Defect Attorneys
12555 High Bluff Dr., Suite 380
San Diego, California 92130
Telephone: (858) 350-4040
Facsimile: (858) 350-4041

Law in Hand

California Court Precludes Recovery for Sink Defects Which Fail to Cause Damage to Other Property

Recently, California Court of Appeals affirmed that a real estate developer could not prevail on a strict products liability theory of recovery in a case involving defective bathroom sinks when the only damage done was to the sinks themselves. The Fourth District, affirming the trial court's ruling in *Fieldstone Co. v. Briggs Plumbing Products, Inc.*, confirmed that "economic loss rule" prevented recovery for the cost of replacing faulty sinks because no further physical injury to the property existed. Under this rule, purely economic damages, including the cost to repair and replace defective products, lost profits, and damages to value, are recoverable only under "contract theories" of liability. In this case, the sinks were themselves found to be defective, but only with respect to their failure to function properly as sinks. Thus, any damages were purely economic in nature, and not compensable as "injuries to the property."

The Strict Liability Claim

Briggs manufactured relatively inexpensive enameled steel bathroom sinks, installed by Fieldstone in their developments throughout the San Diego County area. Each sink carried a one-year written warranty, and were to last for at least 25 years. Not even one year had lapsed from the time the units were installed and first used when the sinks began to experience "popping." Spot welding and inadequate coating around the steel overflow outlets had caused the porcelain units to rust and chip.

Fieldstone responded to a monumental amount of homeowner complaints, replacing 1,900 of the enameled sinks with vitreous china and spending in excess of \$250,000. When Fieldstone sought reimbursement for its expense, Briggs refused to pay. Fieldstone proceeded to file a lawsuit based on several grounds, including breach of warranties and strict products liability,

but was unsuccessful. The trial court found the products liability claim to be without merit since Fieldstone was not found to have sustained "property damage."

In analyzing California case law and the law of other jurisdictions, the court found that the law was quite divided on the issue of whether tort recovery is allowed when the property damage is solely to the product itself. Many courts had allowed such recovery, while others limited the recovery to claims under warranty, subject to certain exceptions. The court determined that tort recovery for property damage presupposes (1) the existence of a defect, and (2) further damage to the plaintiff's property caused by the defect. While Fieldstone argued that the rust and deterioration of the sinks in this case created chipping in areas of the sinks that were not defective, this was not enough. The court could only see a "routine situation" where a purchaser wanted reimbursement of his costs for having to replace a poorly designed product. Accordingly, the problem fell under the category of "economic loss," recoverable only in an action under contract or warranty law. Had there been evidence of "further damage," such as water leaks or mold within the bathroom structure caused by the sink defects, a lawsuit for strict liability might have survived.

What Else Could Fieldstone do to Recover?

Without solid tort damages to rely on, Fieldstone's chances of recovering for the replacement of the sinks would be difficult. First of all, Fieldstone could not seek indemnity or contribution from the manufacturer for incurring the \$250,000 expense of replacing the sinks. Indemnity requires that both parties (here, the developer and manufacturer) have a joint legal obligation for damages. But Fieldstone acted on its own behalf in replacing the sinks. Briggs was not, therefore, considered jointly liable with Fieldstone for the sink damage.

Fieldstone then attempted to argue that under California law, economic damages were recoverable under a negligence cause of action. In *J'aire Corp. v. Gregory*, the court held that economic damages could be recovered in a negligence action without physical or personal injury, if a "special relationship" existed between the parties. However, the court balked at this reasoning as well, holding that the transactions that took place between Fieldstone and Briggs in the installation of the sinks were intended to benefit all retail buyers similarly. For a special relationship to exist, the transaction would need to affect Fieldstone or the homeowners in a particular way, separate from every potential purchaser who would use the sinks. No special relationship meant no recovery in negligence for economic damage.

Finally, Fieldstone argued that Briggs should be liable under a claim for breach of warranty, since promotional literature represented the sinks as workable, non-defective devices. The court disagreed. Unfortunately for Fieldstone, it had known of the defective sinks for three years before letting Briggs know of the problem. Under California law, Briggs was entitled

to "reasonable notice" of the defective sinks, allowing them the opportunity to either repair the problem, or timely resolve any issues outstanding so as to limit damages. Three years was too long to be considered "reasonable" under these circumstances. Furthermore, Fieldstone, as a developer, was considered to be a "sophisticated" party, and therefore better equipped to have specified that it required a higher quality product.

Will Associations Be Affected by This Decision?

Certainly. While it was the developer in the Fieldstone case who lost out on reimbursement, association board members should pay attention to the Fourth District's holding. If you notice a defective product within your development, check to see if there is other noticeable damage near the area. If a sink is leaking, for example, perhaps water damage to the cabinets or floor below has occurred. A cracking tub could present similar problems, especially to the floor and possibly to the interior drywall. Any evidence of this type of "further damage" could provide a strong tort liability argument for property damages should litigation become necessary. Also, keep a file of any promotional material, brochures or pamphlets offered by manufacturers during the sale of their products. These materials could play an important role in establishing a claim based on breach of warranty.

If you are unsure of your right to reimbursement when replacing defective products within a common interest development, discuss the situation with an attorney who specializes in such matters. Proper investigation and planning could make a world of difference in the fight to protect yourself from shoddy construction and defective products.

Prepared by Robert Ward.

Mr. Ward is a partner with the law firm of Burdman & Ward. Burdman & Ward represents homeowner associations against developers and building contractors involved in construction defect litigation. For further information on the statutes of limitations or other construction-related issues, you are welcome to contact us at (888) 350-9080.