

Doe Homeowners v. Poe Seller, et al.
SETTLEMENT DATE: February 24, 1997
CASE TYPE: Defective Construction/Breach of Warranty

RESULT: \$1.353 million Settlement

COURT: L.A. County Superior Court, Santa Monica **JUDGE:** Campbell M. Lucas

SUMMARY: Water intrusion into Malibu beachfront home; Respiratory problems, fungus exposure

PLAINTIFF ATTORNEY: Knopfler & Robertson, By: Alexander Robertson, IV, and Christina Robertson, Woodland Hills

DEFENDANTS ATTORNEYS: Law Offices of Gary L. Bostwick, By: Gary L. Bostwick, and Diana Green Gordon, Santa Monica ; Jones, Day, et al., By: Michael D. Fabiano, and Thomas R. Malcom, Irvine ; Law Offices of Larry A. Rothstein, By: Larry A. Rothstein, Woodland Hills; Law Offices of Michael A. Portigal, By: Michael A. Portigal, and Phyl Grace San Diego

FACTS: In 1993 Plaintiffs husband and wife purchased a Malibu beachfront home from Defendant seller for \$2.5 million. The pre-existing home had been renovated by the seller on property commonly referred to as a "California tear-down". As part of the sale, Defendant seller assigned all warranties to Plaintiffs and purchased a standard home warranty plan for their use.

Shortly after the purchase, Plaintiffs began experiencing severe water intrusion into the home from leaking exterior balconies, the roof and the windows, as well as a complete malfunction of the electronic automation system. Plaintiffs contacted the Defendant seller approximately one year after purchase demanding he make repairs. The seller, who had never occupied the residence or had any knowledge of any of the claimed problems, promptly notified all responsible parties (the other Defendants) including the contractor, subcontractors and suppliers and demanded they make the necessary repairs. Plaintiffs brought this action against the seller, the general contractor, the roofer and the electrical, framing, waterproofing and plumbing

PLAINTIFF: That the house was represented as "new" construction with state-of-the-art building materials and components, including an electronic automation system designed to control lighting, heat, ventilation and air conditioning, the security system, the audio visual and other major systems in the house; that during the three years this case was pending, the water intrusion caused several strains of toxic fungus to grow on the cellulose insulation material in the walls.

Plaintiffs' experts recommended that in order to decontaminate Plaintiffs' home, the entire two-story house would have to be "shrink wrapped" in plastic and placed under "negative air containment" to avoid the release of the mycotoxins. The experts also recommended the complete removal and replacement of all drywall and contaminated cellulose insulation material, effectively tearing the house down to the wood studs which then must be chemically decontaminated.

INJURY: Husband: Mild respiratory problems and headaches in response to exposure to the mycotoxins released by the Stachybotrys fungus. Wife, (previously diagnosed with an immuno-compromised condition): Flu symptoms, sore throat, diarrhea, headaches, fatigue, dermatitis, and a generalized malaise, classic symptoms of exposure to stachbotrys and other mycotoxins which were documented to exist in the home. Plaintiffs claimed \$662,000 for costs of repair, plus damages for loss of use, stigma and personal injury resulting from stachbotrys fungus exposure.

DEFENDANT: Contended by Defendant seller that he never met Plaintiffs and never represented the house as "new" construction. Defendants contended that during the time the case was pending, Plaintiffs refused to allow the seller to make the necessary repairs and failed to mitigate damages, i.e., take any steps themselves to make the property watertight; that Plaintiffs removed a tarp that was placed on their balcony, thereby worsening their water intrusion problems. Defendants contended there was no evidence that the mold grew to significant levels or became airborne so as to pose health problems; that Plaintiffs' damage claim was grossly exaggerated; that Plaintiffs made no effort to mitigate damages, despite their financial ability to do so nor did they take any practical measures to make the necessary repairs; that Plaintiffs unreasonably allowed their water intrusion problems to increase, thereby necessitating greater repairs and causing the growth of non-toxic mold. Defendants contended that Plaintiffs made little use of the home warranty policy; that they failed to pursue any other rights under the warranties that were assigned by the seller.

Defendants' experts estimated the cost of repair at approximately \$150,000, contending that the entire house could be torn down and entirely rebuilt, excluding caissons and pilings to match its present class of

construction for approximately \$450,000.

DEMAND: \$1.7 million, including \$500,000 from automation/electrical

OFFER: \$500,000, raised to \$900,000.

SETTLEMENT: \$1,353,700: \$827,000 from Defendant seller; \$103,000 from automation system Defendants; \$125,000 from Defendant general contractor; \$298,700 from various Defendant subcontractors.

NOTES: Mediation on 2/17/97 before Justice Campbell M. Lucas (Ret.) resulted in this settlement.
See Neubauer's Confidential Report for Attorneys No.: 8795