

Hidden Canyon Homeowners Association v. Griffin Homes, et al.

CASE NO.: 113 150

CASE TYPE: Construction Defect

RESULT: \$9,650,000 Settlement

COURT: Ventura County Superior Court, Ventura **JUDGE:** Linda Meyer, Mediator

PLAINTIFF ATTY: Knopfler & Robertson, By: Alexander Robertson IV and Jonathan S. Vick, Universal City

DEFENDANT ATTY: Zimmerman & Kahanowitch, By: Brian F. Zimmerman and Robert Cohen, Encino ; Federman, Gridley, et al., By: Alan A. Gradwohl and Robert Nation, Los Angeles

FACTS: Between 1984 and 1988 Defendant developer and subcontractors developed a project consisting of 650 condominium and townhome units contained within 107 buildings in Thousand Oaks. Each unit cost an average of \$170,000-\$190,000/unit. The units were sold between 1985 and 1989. During the first 4 years of the project, Plaintiff homeowners association experienced severe leaks from the roofs, windows, and balconies. During this period, Defendants attempted to solve the problems by having a full-time repair crew on-site to perform piecemeal repair and replacement of the roofs. After several years of unsuccessful attempts to stop the leaks, Plaintiff homeowners association filed a lawsuit in 1990 for constructions defects against Defendants.

PLAINTIFF: That the entire project suffered from a litany of construction and design defects, including improperly installed roofs that did not comply with the project plans nor with the manufacturer's specifications; that the design of the roofs was changed during construction by Defendant developer in an attempt to solve the leak problems; that during the course of the case, additional expert investigations revealed missing or improper shear walls and fire walls as well as missing fire-stopping materials between the party walls. In addition, during the course of the case, several buildings suffered from as much as 7" of differential settlement due to improperly compacted fill approximately 60 feet thick in some locations; that additional defects included sliding glass doors that were installed backwards, inadequate and/or missing waterproofing paper and sheet metal behind stucco walls and windows; inadequately designed post-tension slab and foundation systems, and defects in the landscaping and site lighting.

DAMAGES: \$56 million plus in costs for total repairs.

DEFENDANT: Admitted liability on the roofing issues but contended that the roof only required spot repairs. Defendants denied that there were any geotechnical or other defects; that the entire project could be repaired for \$2.5 million.

DEMAND: \$56 million reduced to \$18.5 million prior to mediation, and again to \$15 million at mediation.

OFFER: None prior to mediation.

SETTLEMENT: \$8.665 million total with \$8.125 million new money paid by Defendant developer's insurers and subcontractors plus \$540,000 paid by additional Defendant subcontractors in an earlier settlement in 1993. Defendant developer assigned to Plaintiff all of Deft's rights for express indemnity and attorneys fees against 7 non-settling subcontractors on the roofing issues. Further, Defendant developer's insurance carriers assigned to Plaintiff all of their rights against the non-settling subcontractors arising from Defendant developer being named as an additional insured under the non-settling subcontractors' own liability policies. Plaintiff sued the seven non-settling subcontractors directly. In August, 1995 Plaintiffs settled with the remaining subcontractors for an additional \$1,525,500, for a total settlement of \$9,650,500.

NOTES: Halfway through the case, in March, 1992, Griffin Homes petitioned for Chapter 11 bankruptcy protection. It argued that its liability insurance policies were assets of the bankruptcy estate; that this case should be handled similarly to the Dalkon Shield cases, requiring Plaintiff to "prove-up" their claims in bankruptcy Court to determine if the total amount of claims exceeded the available potential insurance coverage. After nearly 6 months of hearings and motions, the U.S. Bankruptcy Court granted Plaintiff's motion for relief from the bankruptcy stay in return for a stipulation that any judgment obtained in the construction defect lawsuit could not be enforced against any asset of Griffin's bankruptcy estate and that Plaintiff's only recourse would be to pursue Griffin's liability insurance policies to the extent that insurance coverage existed.

Thus, Plaintiff was required to not only litigate what defects, if any, existed at the project but had the additional burden of proving that one or more of Griffin's primary and excess liability insurance policies afforded coverage to pay for the defects. In addition, after Griffin filed bankruptcy, Plaintiff sought and

obtained permission from the bankruptcy Court to amend its Complaint and name each of Griffin's subcontractors and design professionals as additional Defendants. Thus, the case grew dramatically from a two party case to over 40 parties after Griffin filed bankruptcy.
See Neubauer's Confidential Report for Attorneys No.: 5474