

MICHAEL J. LEVANGIE
JEFFERY C. LONG⁽²⁾
ERIC S. EMANUELS
SHARON B. FUTERMAN⁽¹⁾
SHAWN C. LOORZ
BRYAN L. MALONE
LAURIE L. MARQUIS
ANNA J. NIEMANN
JASON A. ROSE⁽²⁾⁽⁴⁾

OF COUNSEL
JAMES BALDOCK⁽³⁾
JENNIFER MAHE⁽²⁾

Members of the Bar in California,
Missouri (1), Nevada (2), Oregon (3) and
Texas (4)



2021 N STREET
SACRAMENTO, CALIFORNIA 95811
(916) 443-4849 FAX (916) 443-4855
www.llg-law.com

July 31, 2014

NEVADA OFFICE
808 W. Nye Lane, Suite 204
Carson City, NV 89703
(775) 297-4321
FAX (775) 297-4258

Michael J. LeVangie
michael.levangie@llg-law.com

WHITE PAPER ALERT

Construction Defect *Design Professional Liability*

Beacon Residential Community Assn v. Skidmore, Owings & Merrill LLP
(July 3, 2014, S208173) __ Cal.4th __

California Supreme Court Upholds Design Professionals' Duty to Residential Purchasers

Design professionals often become involved in construction defect lawsuits when they are sued by developers with whom they have contracts. The California Supreme Court has now changed this paradigm holding construction design professionals owe a duty of care to third party property purchasers. Restricting the applicability of earlier case law often relied upon by design professionals to avoid liability if they only prepared plans or made design recommendations, the Court held design professionals owe a duty to purchasers and can be liable for negligence even when they do not build the project and do not exercise control over construction decisions.

The *Beacon Residential* Holding

In *Beacon Residential Community Assn v. Skidmore, Owings & Merrill LLP* (July 3, 2014, S208173) __ Cal.4th __, a condominium homeowners association sued the developer of the project and the project architect for construction defects caused by negligent architectural design work. The Court held where a design professional is not subordinate to any other design professional (i.e. principal architect for the project) they owe a duty of care to future purchasers. Recognizing the developer made final decisions on the architect's recommendations and the contractors had control over the construction process, the Court still concluded that in hiring the architect the developer relied upon the architect's specialized training, technical expertise, and professional judgment, and that the architect applied its expertise throughout the construction of the project, conducting inspections, monitoring contractors' compliance with plans, and altering design requirements as issues arose. In holding that the design professional could be directly liable to future homebuyers, the Court noted the alleged negligent design bore a close connection to the injury suffered, and it was foreseeable home purchasers would suffer injury.

The Supreme Court distinguished *Weseloh Family Ltd. Partnership v. K.L. Wessel Construction Co., Inc.* (2004) 125 Cal.App.4th 152, often relied upon for the proposition that a design professional does not owe a duty of care to a third party property owner. The Court limited the applicability of *Weseloh*, explaining *Weseloh* did not hold that a design professional provides only professional advice and opinions, without having ultimate decision making authority, cannot be liable to third parties for negligence. Rather, *Weseloh* held a design professional's role can be so minor or subordinate to another professional in the same discipline as to foreclose liability to third parties.

Conclusion

Beacon Residential increases the liability exposure of design professionals for construction claims. This decision provides a source of direct recovery for homeowners by solidifying the right of property owners to bring claims directly against design professionals for construction deficiencies, and, in those circumstances where the design professional's indemnity obligations are not controlled by contract, it strengthens the ability of builders, developers, and contractors to bring claims for equitable indemnity against design professionals.

Though the case was brought in the context of residential construction, its applicability does not appear limited to only residential properties. The decision briefly addressed the SB 800 Right to Repair Act's statutory scheme, but the Court declined to find these statutes provided the basis for the duty. As a result, where commercial properties are built for sale, the design professional may be directly liable to the purchaser/property owner.

Please contact us with any questions.

Michael J. LeVangie

LEVANGIE LAW GROUP

2021 N Street

Sacramento, California 95811

t. 916.443.4849

f. 916.443.4855

e. michael.levangie@llg-law.com

Reno • Sacramento • Truckee

©2014 - LeVangie Law Group, LLP. These publications are intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by sending and receiving these publications. Members of the LeVangie Law Group will be pleased to provide further information regarding the matters discussed in these publications.