THE SUPREME COURT FINDS THAT LIABILITY MIGHT ATTACH TO LEAD ARCHITECTS

© Sandra Calin
Partner, Kramer, deBoer & Keane, LLP

A few years ago, our firm was retained to represent the window installer on a large commercial building in San Jose. The owner-builder first hired an architect to design the building, and then hired a general contractor, who in turn hired all of the sub-contractors that worked on the building. The original owner-builder sold the building when it was a couple of years old, and four years later, during an especially heavy rainy season, the building developed leaks.

Most of the parties agreed that the primary sources of the leaks were the window installation and the stucco. However, a large factor in the cause of the damage was the design of the building. Although the architect was eventually sued and made a party to the lawsuit, his position was that there was no privity with any of the parties who had cross-complained against him and therefore he had no liability as to them.

Now, along comes *Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP, et al.* 2014 WL 2988058, issued by the California Supreme Court on July 3, 2014. In this case, the developer of a condominium was sued by the homeowners association on behalf of its members for construction design defects that were alleged to have made the homes unsafe and uninhabitable during certain portions of the year. Two of the defendants were architectural firms who had designed the homes but did not make the final decisions regarding how the homes were to be built.

The architectural firms demurred, citing lack of privity and arguing that they owed no duty of care to the homeowners since there was no contractual relationship with them. The trial court agreed, and sustained the demurrer, finding that as long as the final decision rested with the owner, there was no duty by the architect to the future condominium owners.

The California Court of Appeal (First District) reversed and held that an architect does owe a duty of care to future homeowners in the design of a building where the architect is the principal architect on a project, provides professional design services, and is not subordinate to other design professionals. This duty was found both under common law principles, as well as the Right to Repair Act (SB 800, codified as California *Civil Code* §895 et seq.). The California Supreme Court has now affirmed the judgment of the Court of Appeal.

Under common law duty principles, the Court cited *Biakanja v. Irving,* 49 Cal.2d 647 (1958), which held that a defendant may be held liable to a third party not in privity, based on the balancing of a number of factors, including "the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy of preventing future harm." *Id*. at p. 650.

The Court also discussed the concept of privity, and its decline in the construction defect context, as discussed in *Aas v. Superior Court*, 24 Cal.4th 627 (2000), and starting with *Stewart v. Cox*, 55 Cal.2d 857

(1961), which held that a subcontractor was liable for injuries to third persons resulting from his negligence even though his work was accepted by the owner. The Court reasoned that the trend is to hold building contractors to the same general standard of reasonable care for the protection of anyone who may foreseeably be harmed by the negligent work, even after acceptance of the work. Courts have also applied these third party liability principles to architects, both in personal injury and property damage contexts, where it was found that an architect's negligence caused injury or damage to a third party. *Montijo v. Swift*, 219 Cal.App.2d 351 (1963); *Mallow v. Tucker, Sadler & Bennett*, 245 Cal.App.2d 700 (1966); *Cooper v. Jevne*, 56 Cal.App.3d 860 (1976).

In *Beacon*, the Supreme Court held that "the architect owes a duty of care to future homeowners where the architect is a *principal architect* on the project … even if the architect does not actually build the project or exercise ultimate control over construction decisions." 2014 WL 2988058 at p.9. The architects uniquely possessed architectural expertise and applied their specialized skill and professional judgment throughout the construction process.

Although the Court of Appeal found that the Right to Repair Act also supported a finding of liability on the part of the architect, the California Supreme Court did not decide that issue, as liability was found under the common law duty of care.

The moral here is that if a negligent act causes damage, the injured party will most likely be able to state a cause of action against the wrongdoer, irrespective of any prior relationship between the two. Of course, this case was decided on a demurrer, so the plaintiff still has to prove that the architect was, in fact, negligent and that the plaintiff was actually damaged as a result.