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Court of Appeal Rules That “Rough Categories”
May Be Used to Initially Determine Good Faith
Settlement Allocations for Various Types of Defects

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In an important decision which sheds light on what are sometimes complex issues involving good faith settlements in multi-party construction defect cases, the California Court of Appeal, Second District ruled in EL Escorial Owners Association v. DLC Plastering, Inc. (2007) DJDAR 13914 ruled that a trial court may (i) approve settlements as being in good faith and then hold additional hearings to apportion settlement amounts and (ii) may use “rough categories” to determine good faith settlement allocations for various types of defects.

The instant case concerned a construction defect action involving the El Escorial Condominium Development. The Development consists of four three-story buildings housing 261 condominiums which were originally constructed as apartments and then converted to condominiums between 1990 and 1996.

The complaint was filed in March 2000. The Homeowners Association for the El Escorial Condominium Development sought damages from the builder as well as 35 contractors and subcontractors. Prior to trial, most of the defendants settled and the Trial Court approved good faith settlements totaling \$10,629,759. The builder and related entities paid \$5,649,999 and several contractors and subcontractors contributed \$4,979,760. The Homeowners Association then proceeded to trial against subcontractors who did not settle. Indemnity claims were also assigned to the Homeowners Association by the builder.

The non-settling defendants consisted of an installer of bathtubs and windows, painters, a framing contractor and a plastering contractor. The matter was tried to the Trial Court without a jury.

Prior to trial, the Trial Court approved a number of good faith settlements involving other defendants but did not specify particular construction defects attributable to any of the settling defendants. During a hearing involving the final settlement before trial, the non-settling defendants asked the Trial Court to

apportion the amounts of settlement among the various settling contractors and relate those amounts to specific construction defects.

Instead of continuing the trial date, or reopening the previously approved settlements, the Trial Court devised a plan whereby, as the evidence unfolded at trial, the court would hold hearings on apportionment during which it would make “the decision on the allocations with the assistance of [Homeowners Association and non-settling defendants’ counsel]”. The parties did not object to the procedure.

Following the trial, the Trial Court ruled that the latent defects which were caused by the plastering contractor and the framer were \$8,600,000. The Trial Court then provided credits based on the pre trial settlements which reduced their obligation to \$2,461,495. The subcontractors appealed on numerous grounds among which included a claim that the Trial Court had approved good faith settlements without a proper adversarial process to determine settlement allocations for categories of defects citing Regan Roofing Company v. Superior Court (1994) 21 Cal.App.4th 1685.

On appeal, Court of Appeal ruled that the subcontractors had not cited to the record to describe the proceedings on settlement allocations and therefore waived their arguments citing Glendale Federal Savings & Loan Association v. Marina View Heights Development Company (1977) 66 Cal.App.3d 101.

However, the Court of Appeal also ruled that the settlement proceedings were sufficiently adversarial and noted that the defendants had multiple opportunities to challenge the settlements. In that regard, the Court of Appeal pointed out that, between 2001 and 2003, numerous settling defendants submitted good faith settlement applications which were rarely contested.

The Court of Appeal also ruled that the Trial Court did not err by first approving good faith settlements and then holding additional hearings to apportion settlement amounts. The Court of Appeal noted that the Trial Court did require, during trial, that the Homeowners Association file a detailed settlement spreadsheet with specific allocations. The spreadsheet provided the total dollar amounts of the various settlement allocations for each of the settling defendants categorized by the proportional amount allocated to the various categories of defects. The Court of Appeal found that the defendants had been afforded the opportunity to challenge the allocations and noted that they had responded by submitting a declaration, trial exhibits, charts and information prepared by experts and that the Trial Court had amended allocations as to toxic mold at the defense’s request. The Court of Appeal also ruled that the Trial

Court did not err by using trial evidence to adjust settlement allocations and that allocations of credit were essentially issues of fact for the trial court.

The El Escorial case is certainly an important decision. It basically stands for two propositions. First, if there is a genuine issue as to allocation of settlement amounts by a settling co-tortfeasor, a non-settling party would be well advised to file an opposition at the time of the application or motion for determination of good faith settlement. Second, the El Escorial case specifically provides that the Trial Court may approve good faith settlements and then later apportion pre trial settlements based on categories of defects at a later time, even at trial, given the broad discretion given to the Trial Court.

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