

HOMEBUILDING INDUSTRY LEGAL UPDATE

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CALIFORNIA “RIGHT TO REPAIR ACT” DECISION ALLOWS BUILDERS TO SUE MANUFACTURERS FOR EQUITABLE INDEMNITY ABSENT A SHOWING OF RESULTANT PROPERTY DAMAGE

On December 2, 2008, the California Court of Appeal issued the first reported decision interpreting California’s Civil Code sections 895, et seq. (the “Right to Repair Act”).

In *Greystone Homes, Inc. v. Midtec, Inc.*, 2008 WL 5063294, the Court of Appeal held that a builder may sue a manufacturer of a defective product for equitable indemnity in order to recover costs spent to repair the defective product, even though the defect had not yet damaged other property. The Court held, however, that a builder may not sue the manufacturer directly for negligence for that defect.

The builder, Greystone, repaired defective plumbing fittings that had been installed in a condominium development in Chula Vista. Greystone repaired fittings that had leaked, as well as others that had not, but were considered certain to leak in the future. Greystone then sued the manufacturer of the plumbing fittings, Midtec, to recover its repair costs. Greystone did not have a contract with Midtec. Hence, it could only sue Midtec under a tort theory (e.g., negligence, or equitable indemnity). Midtec, however, refused to reimburse Greystone for its repair costs, claiming that under either a negligence, or equitable indemnity theory, the “Economic Loss Doctrine” prevented Greystone from recovering its cost to repair defects that had not yet caused damage. As to the plumbing fittings that had not yet leaked, Greystone could not make this showing.

The trial court agreed with Midtec, relying on the Economic Loss Doctrine, which prohibits a party from recovering in tort for defects that have not yet resulted in property damage. The trial court held that since Greystone was not a “homeowner” under the Right to Repair Act, Greystone was required to prove that the defective product had resulted in damage to other property in order to recover its repair costs against Midtec, even though the Right to Repair Act allowed homeowners to *sue Greystone* for Midtec’s defective plumbing fittings *without proof of resulting damage*.

The Court of Appeal disagreed. First, the Court of Appeal held that the Right to Repair Act effectively repealed the Economic Loss Doctrine where a violation of the Act, without an additional showing of resulting property damage, was all that the Act required. Second, the Court acknowledged that, under the Act, the homeowners could have sued Midtec directly for violating the Act, without a showing of property damage. And, third, since both Greystone and Midtec were jointly and severally liable to the homeowners for the defective plumbing fittings, Greystone was entitled to bring a derivative equitable indemnity action against Midtec in order to recover that portion of the repair costs that were due to Midtec’s defective product, even if the defective product had not yet damaged other property. By comparison, the Court held that an action for negligence amounted to a direct cause of action against Midtec, not a derivative action and, hence, could not be maintained absent a showing of resultant property damage.

This decision proves important for builders in that it effectively levels the playing field. Builders otherwise would have been put in the untenable position of being sued to repair defects that had not resulted in damage, without any recourse from the parties responsible for those defects. This decision encourages all responsible parties to come to the table in order to resolve construction defect claims short of litigation.

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