

The Leaning Tower of San Francisco

Ira J. Gonzalez – December 23, 2016

Despite contributing to the recent economic recession that affected major metropolitan cities across America, the high rate of development and construction has rejuvenated the urban core of major cities, providing less dependence on suburban sprawl and establishing an essential infrastructure for future development. On the other hand, some fear that buildings rising at an alarming rate may open the door to shoddy construction. Calls to building officials, engineers and lawyers may increase with complaints of structural defects as developers push forward to complete projects to capitalize on property values and improving markets.

Building permits in the U.S. through October have steadily increased since July 2016. In Miami-Dade County, Florida alone there were [more than 100 high-rise crane permit requests](#) pending in 2014. Conversely, the entire nation has experienced a skilled labor shortage since the Great Recession in 2008 and 2009 where two million construction jobs were lost. The Associated General Contractors of America [reported](#) in late August that two-thirds of construction firms nationwide reported having a hard time filling hourly craft positions that represent the bulk of the construction workforce.

These circumstances may be a key factor in high-rise construction defect cases, which generally deal with design, material and construction deficiencies. The complexity of these cases are on full display when costly battles involve a multitude of parties, including developers, general contractors, subcontractors, architects, engineers, suppliers, product manufacturers and homeowner associations. A clear example of this quagmire is the recently filed *Vizcayne North Condominium Association, Inc. v. W.G. Yates & Sons Construction, Co.*, where 27 defendants are named in a 184-page complaint alleging, *inter alia*, breach of contract/express warranty, professional negligence and violations of the Florida Building Code. (Fla. 11th Cir. Ct. Nov. 8, 2016). The troubled Vizcayne project was partially constructed from 2007 to 2010 until the developer went bankrupt, and was not completed and turned over to the Association until December 2013. The purported defects affect waterproofing, life-safety, mechanical, electrical, plumbing, heating ventilating, air conditioning systems and components, and structural (balcony railings and stucco).

Then there's the sinking 58-story Millennium Tower in San Francisco, California, which has been branded as the Leaning Tower of San Francisco. Even the European Space Agency [released satellite imagery](#) showing the skyscraper sinking at a steady rate. In *John Eng and Charlene Smith v. Millennium Partners I, Inc. and Transbay Joint Powers Authority*, filed in August of this year, plaintiffs claim that the tower has sunk at least 16 inches and is continuing to sink at a rate of approximately an inch a year. (Cal. Sup. Ct., San Francisco Aug. 11, 2016). Just as alarming, the complaint alleges that the high-rise has tilted at least 2 inches to the northwest, which translates to a 15-inch tilt at the top of the building. The resulting damage includes cracking and buckling in individual units and the common areas of this luxury tower.

Practice Points:

- If you represent developers, contractors and architects, pay close attention to whether individual projects are staffed with qualified subcontractors and ensure well-reasoned decisions are made as to use of high-quality materials to avoid major defects, which will likely limit your exposure when the project is issued a certificate of occupancy and turned over to the association.
- Associations may want to consider hiring architectural and/or engineering firms to evaluate and determine whether defects exist—particularly life threatening ones. However, they may also want to consider the negative implications—like scaring away buyers and potential tenants and financial lenders, and declining property values--that can ensue once a building is prominently labeled defective.

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