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Legal Briefing

HKC Defeats Class Certification by Park Residents

By Jim S. Morse, Esq.

In January, the Fourth District of the California Court of Appeal upheld the trial court's ruling that the residents of a Huntington Beach mobilehome park did not meet the legal requirements to bring a class action for a myriad of alleged violations against the current and prior owners of the park.

The plaintiffs sought damages resulting from the growth of mushrooms, standing water, insomnia, falls, backed up plumbing, soft spots in the floor and even "extreme rhinitis" experienced by a household dog. Faced with such disparate claims, the Court of Appeal concluded that the Superior Court had correctly denied the residents' request that the claims be tried in a class action. The plaintiffs then filed their unsuccessful appeal.

The Court of Appeal upheld the arguments made by HKC at the trial court level that the individual plaintiffs bringing the lawsuit lacked the requisite elements of a community of interest, numerosity and a commonality of claims. The Court further found that common issues of fact did not predominate over individual claims of property damage, personal injury and emotional distress, adding that there was no likelihood that the Court or the parties would substantially benefit from proceeding with the case as a class action.

In California, class certification is governed by the Code of Civil Procedure, Section 382 which provides, in part, when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or many may sue…for the benefit of all.' (See, Arenas v. El Torito Restaurants, Inc. (2010) 183 Cal. App. 4th, 723, 731.

The Court of Appeal followed Fireside Bank v. Superior Court (2007) 40 Cal. 4th 1069, 1089, which held that "Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. …In turn, the 'community of interest requirement embodies three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."

The result for the HKC client is that instead of facing a class action that could have included potentially hundreds of residents with a wide-ranging array of claims, the park owners now can defend against the specific claims of a handful of individual plaintiffs.

Congratulations to HKC's Robert Coldren, James Morse and Rhonda Mehlman for the victory at the trial court and the affirmation by the Court of Appeal.

Jim Morse is a Partner with HK&C and represents corporate and individual clients in a wide range of business litigation matters. He may be reached at jmorse@hkclaw.com or 714-432-8700.

New ADA Rules: Ready or not, here they come!

By Chris R. Elliott, Esq

The ***new*** Americans with Disabilities Act (or "ADA") rules become mandatory March 15, 2012. This is the first revision of the ADA rules in over 20 years. The new ADA rules adopt the 2010 ADA Standards for Accessible Design which have been retooled to be more "user-friendly" in order to clarify numerous ADA issues which have arisen over the last two decades. Many were confused last year when these same rules went into effect on a voluntary basis on March 15, 2011. Effective this March 15, they become mandatory.

Under Federal ADA laws, an ADA plaintiff generally is entitled to injunctive relief requiring the correction of an accessibility issue. If the accessibility issue is corrected, any Federal claims filed in court will be dismissed. However, under equivalent California laws, an ADA plaintiff can recover penalties and attorneys' fees even if the accessibility issues are corrected and the Federal claims have been dismissed. This has complicated ADA compliance and enforcement in California.

For example, in 2009, the California Supreme Court ruled in *Munson v. Del Taco* 46 Cal. 4th 661 that there is no distinction between a $1,000 "non-intentional" violation and a $4,000 "intentional" violation. As a result, many of our clients have seen a significant increase in ADA lawsuits because an ADA plaintiff in California is now entitled to a $4,000 penalty for any violation. Coupled with the new ADA rules, there is the potential for a slew of new lawsuits by "full-time" ADA plaintiff's who essentially earn a living from this process.

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New ADA Rules *(continued)*

The obvious answer is to comply with the ADA Rules. One often overlooked option is to have your property inspected by a "certified access specialist" pursuant to California Civil Code sections 55.51 et.seq. Once your property has been "CAS inspected", you will have certain rights, including the right to an initial stay of any ADA litigation and an early evaluation or settlement conference. While you may not be able to completely prevent an ADA lawsuit, this process may deter ADA plaintiffs or may allow you to settle the action early with minimal attorneys' fees. Of course, should you have a more complicated situation, you should always consult legal counsel well versed in this area of the law.

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Are You Sure You Are An Additional Named Insured?

By Richard Gerber, Esq.

Since construction defect litigation is typically complex and expensive, the general contractor or developer may require its subcontractors to maintain general liability insurance in which the general contractor and/or project developer are named as an "additional insured". Subcontractors on a construction project are often required to obtain a "certificate of insurance" from their insurers showing that the general contractor and/or project developer are "additional insureds" under the subcontractors' liability insurance policies.

A "certificate of insurance" is a document issued by an insurer or an authorized agent evidencing the existence of insurance. Typically, the certificate states the insurer, type of insurance, name(s) of the insured (including any additional insureds), policy limits, and the period and scope of coverage (e.g., whether limited to a particular construction project).

These certificates invariably state, "A certificate of insurance is merely evidence that a policy has been issued ... It is not a contract between the insurer and the certificate holder."

To comply with such insurance requirements, subcontractors usually obtain endorsements naming the general contractor and/or developer as an additional insured under the subcontractor's CGL policies. A certificate of insurance is typically issued to the developer or contractor as evidence of the subcontractor's insurance, but it is not a contract with the insurer and does not by itself convey additional insured status on the holder.

Thus, if you are a developer, general contractor, or anyone else relying on another party's insurance for additional insured status it is critical that in addition to the certificate of insurance, often issued by the other party's insurance broker with or without the authority of the insurance company, that you obtain a copy of an endorsement issued by the other party's insurance company naming you as an additional insured. An insurance company issued endorsement will foreclose questions as to whether the other party's insurance broker was authorized to bind the insurance company into affording you additional insured status.

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