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Chinese Drywall Judge OKs \$6.6 million settlement fund

August 12, 2010 By: Adolfo Pesquera

A Miami-Dade circuit judge has approved a class action settlement between a Homestead builder, real estate brokerage and 149 homeowners who sought damages for Chinese drywall installed in their houses.

Judge Joseph P. Farina concluded the \$6.6 million fund established for the owners was reasonable, given the fact that "the settling parties have limited assets and collectibility of these funds remains an open question."

Settlement

In another drywall case, a Palm Beach Circuit judge on Wednesday allowed homeowners to proceed with individual claims in state court despite concerns about possible duplicate claims in federal litigation in Louisiana.

In the settlement, the amount would average \$40,268 per house, including attorney fees to be determined later. The case is one of only a handful to settle in the Chinese drywall arena.

Up to 149 home buyers in the Palm Isle Estates, Augusta Greens and Arbor Park subdivisions at the sprawling Keys Gate planned community were identified as part of the plaintiff class, and none opted out, Farina noted.

The class includes any people or businesses who bought homes with Chinese drywall from 2004 to the present from Homestead-based South Kendall Construction, its affiliated Palm Isles Holdings, and Keys Gate Realty.

Steven G. Schwartz of Boca Raton-based Schwartz & Horwitz represented South Kendall, which filed a Chapter 7 bankruptcy Feb. 24. He said Keys Gate agreed to put \$2.6 million into the fund. The remainder will come from South Kendall's liquidated assets. Farina's order also must be approved in the bankruptcy court case.

The settlement bars any buyers who knew beforehand that the house had defective drywall and anyone who bought a house as is with no right to inspect through a foreclosure sale.

Homeowners claimed the drywall corroded electrical components and emitted an unpleasant rotten-egg odor.

Many builders used Chinese drywall during the housing boom of 2002-2006, and it may be in as many as 36,000 Florida homes. Florida Sen. Bill Nelson and Louisiana Sen. Mary Landrieu proposed legislation last week asking for a recall and a ban on tainted Chinese drywall imports.

Federal multi-district litigation in Louisiana included claims against South Kendall, but the settlement was structured to account for them, Schwartz said. The drywall controversy was the main cause of South Kendall's insolvency, he added.

The settlement is "an excellent first step" compensating homeowners, Schwartz said. Ongoing lawsuits against the drywall supplier, Miami-based Banner Supply, and manufacturer should eventually assure homeowners recoup the full cost of remediating their properties. Banner is a defendant in the class action but did not settle.

Lead plaintiffs Jason and Melissa Harrell are represented by Victor Diaz of Podhurst Orseck in Miami. Diaz did not return a call for comment by deadline.

Just before approving the settlement and entering final judgment Aug. 5, Farina ruled on a motion by a homeowner who also was a former South Kendall employee. Former construction chief Todd Walker was attempting to join the class as a plaintiff.

Walker owns a South Kendall-built house containing the defective drywall. He was fired Feb. 24 as a result of South Kendall's bankruptcy.

Farina denied Walker's request to join the class, noting settlement stipulations barred participation by all employees and agents of the defendants. The settlement was drafted in June, three months after the bankruptcy filing, the judge noted. Since South Kendall no longer had employees, he said logic dictated the exclusionary stipulation referred to former employees.

Keys Gate attorney Alan Feldman of Lydecker Diaz of Miami did not return a call for comment by deadline.

Meanwhile, Palm Beach Circuit Judge Glenn D. Kelley took up the issue of whether drywall cases there could proceed since overlapping claims exist in Louisiana.

Kelley determined about 74 cases pending in Palm Beach County had too many



Joseph P. Farina

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individual variations to treat as a class action, but he allowed the state law claims to move ahead.

"The court is convinced at this point that good cause exists not to stay the Chinese drywall cases," he wrote. "Plaintiffs should be permitted to proceed."

Attorney David Durkee of Roberts & Durkee in Coral Gables, representing lead plaintiff Marlene Bennett against defendant Centerline Homes, did not return phone calls by deadline.

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