

SOUTH CAROLINA LAWYERS WEEKLY

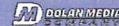
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Simple approach nets results in construction case

Homeowners win \$2.246M verdict over faulty condos

Just keep it simple.

That strategy paid off big for a Florence homeowners' association recently as its lawyers streamlined their lawsuit against the developer and builder of a condominium complex and won a \$2.246 million verdict that exceeded their expectations.

The verdict was more than \$400,000 over the dollar amount that Florence lawyers Kevin M. Barth and Robert E. Lee suggested to the jury as a fair award.

But it was right in line with their strategy, which relied on a short trial and a straightforward message to focus the jury's attention on their clients' case.

"I think we got a better result because I don't think we ever lost the jury's attention," Lee told South Carolina Lawyers Weekly.

The homeowners' association at the 56-unit Hunter's Creek Condominiums sued both the development company and construction firm in 2005, asserting that the complex had suffered severe damage as result of design and construction flaws.

The verdict in Florence County came in the case of *Hunter's Creek Homeowners' Association, Inc. v. Hunter's Creek, Inc., and Glenn's Bay, Inc.*, Civil Action No. 2007-CP-21-2310R.

Lawyers for the defendants did not return calls from South Carolina Lawyers Weekly prior to publication.

Water Problems

The plaintiffs, most of them elderly, claimed that water had intruded into the walls of the complex, resulting in rot and mold, and that parking areas and roads had become cracked and rutted. They blamed:

- Flawed construction of roads and parking areas;
- Flawed drainage on the site;
- Failure to install proper exterior vinyl siding and flashing on the condos; and
- Failure to install proper water-proofing systems.

The plaintiffs said the leakage damaged windows, door frames, carpets, drywall, baseboards and doors. Also, they claimed that the road was subject to flooding, Lee said.

Such claims could have kept a trial going for weeks, according to Lee. Indeed, the plaintiffs initially hired Barth, a trial lawyer, and asserted four causes of action against the development company and two against the building firm.

But when Barth associated Lee, a construction law attorney, the two decided on a new approach: Have a short trial and keep the jury interested.

They pared their causes of action down to breach of fiduciary duty by the development company and negligence by the builder. Anticipating the defense, they took one deposition and served no interrogatories or requests for production, Lee said.

In the end, the trial took four days, and the negligence claim yielded the lion's share of the verdict — \$1.8 million in actual damages.

"We just approached it as a simple tort case," Lee said. "Duty, breach, damage, proximate cause. We didn't try some super-high-sophisticated construction case that took multiple weeks."

Always they were mindful of the jury's attention span.

"If we had gone into a multi-week trial, with all kinds of construction terms and way-out stuff and a laser show and that kind of thing, we would have bored them to death," Lee said. "Instead, we boiled it down to its simplest components. We called very few witnesses."

In addition to the \$1.8 million, the plaintiffs also won \$100,000 against the building firm on a negligence claim alleging defects in pavement, grading and parking areas. In addition, the jury awarded a total of \$346,000 against the



Robert Lee

developer for breach of fiduciary duty for defects in the building and pavement, grading and parking areas.

Lee attributed the winning strategy to Barth.

"I sat down with him and I started explaining all the construction nuances," Lee said. "And he stopped me. He said, 'Jurors want to know three things: whose fault it is, why it's their fault and what it's going to take to fix it.'"

Lee handled the pre-trial work, and Barth handled the trial.

Lee said the age and infirmities of the residents made for "compelling plaintiffs."

"Probably in excess of 70 percent are 70 years old or older. This is their last stop on the way to either a long-term care facility or a cemetery," Lee said. "I mean there are people in these units who are on oxygen."

BY FRED HORLBECK
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VERDICT REPORT

\$2.246 million verdict

Brief statement of claim: Negligence – Breach of fiduciary duty – Developer

Principal injuries (in order of severity): Water intrusion and turned over a road in a substandard condition, then turned it over to the homeowners.

Special damages: n/a

Tried or settled: Verdict (jury)

County and court where tried or settled: Florence County Court of Common Pleas

Case name and number: *Hunter's Creek Homeowners Assn., Inc. v. Hunter's Creek, Inc., and Glenn's Bay, Inc.*, Civil Action No. 2007-CP-21-2310R

Date concluded: Oct. 31, 2008 (four-day trial)

Name of judge: Hon. Michael M. Nettles

Amount: \$2.246 million

Insurance carrier: Auto Owner's Insurance Co.

Expert witnesses, areas of expertise and hometown: R.V. Buric, forensic engineer, Wilmington, N.C.; Prime South, cost estimator, North Myrtle Beach; Steve Watkins, cost estimator, Watkins Services, North Myrtle Beach; Akin & Co., property managers/loss-of-use analysis, Florence.

Attorneys for plaintiff: Kevin M. Barth, Ballenger Barth & Hofer; and Robert E. Lee, McLain & Lee; both of Florence

Other useful info: The property was a 56-unit complex built in the late 1990s. Soon after it was completed and residents moved in, problems started, the plaintiffs claimed. They included cracks and ruts in the road and water leaking in around windows and doors, resulting in rot and mold.

Dan Daniels, the president of the homeowners' as-

sociation, and Thomas Timmons, a former president of the group, tried to get things fixed. They said they approached several parties, including the state highway commission, before turning to litigation.

The plaintiffs' lawyers said the developer's defense was that the buildings were vinyl siding structures, that outdoor sprinklers sprayed water against the siding and that mulch had built up and contributed to the leaking.

R.V. Buric, an expert witness for the plaintiffs, testified that the complex's structures violated building codes. While the siding met code, it had not been installed properly. The plaintiffs' theme at trial was that shortcuts were taken in construction.

Barth told the jury, "I'm not a construction lawyer. But what I do know is that you can't build junk, sell junk and expect people to live in junk."

During cross-examination, Barth got the builder to admit that his own house, which he had built himself, had the same water-intrusion issues. The house was not located at the complex.

Submitted by: Robert E. Lee

Editor's note: The information in South Carolina Lawyers Weekly's verdict and settlement reports was provided by the counsel for the prevailing party and represents the attorney's characterization of the case. Questions or comments may be directed to Greg Froom at greg.froom@sc.lawyersweekly.com.