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Builder of Berkeley Apartments Has Paid Millions in Balcony Suits

By Jaxon Van Derbeken

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The investigation into the cause of the Berkeley apartment balcony collapse that killed six people and injured seven focused Wednesday on the company that constructed the building — a firm that has paid more than \$6 million in the past two years to settle lawsuits claiming its work caused balconies to rot prematurely and fail.

Berkeley Mayor Tom Bates said there was “high probability” that water had penetrated and rotted the wooden underpinnings of the balcony that broke away early Tuesday in downtown Berkeley during a 21st birthday party for an Irish student visiting the Bay Area for the summer. Officials ordered a second balcony removed from the same building Wednesday because it was “structurally unsafe,” and Bates said its problems were similar to those suspected in the collapse.

Court documents show that Segue Construction Inc., the Pleasanton company that built the Library Gardens apartment complex at 2020 Kittredge St., site of Tuesday’s tragedy, has paid \$6.5 million since 2013 to settle a pair of lawsuits alleging problems like those apparently at the center of the Berkeley probe.

Bates said city investigators have not completed their work on the collapse, which killed five Irish nationals and a woman from Rohnert Park who held dual U.S.-Irish citizenship.

“We are waiting for the real report,” Bates said in an interview. “I am not an engineer, but it could turn out” that the wood underpinning the balcony had rotted from exposure to water.

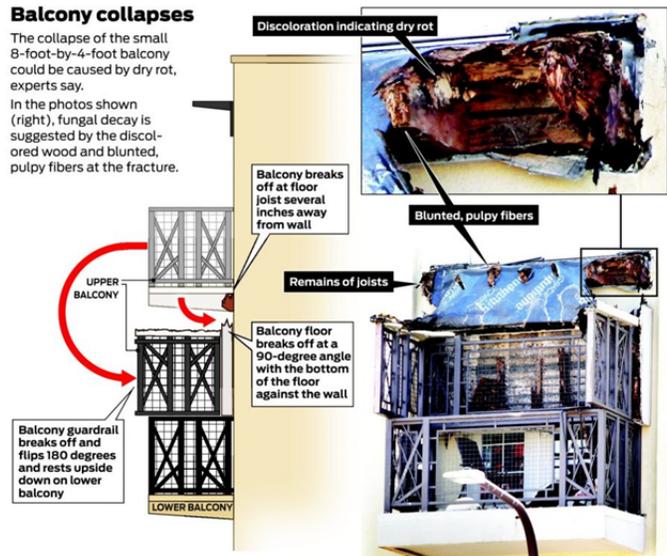
“In my view, there is a high probability” that was the problem, Bates said. “We’ll know very shortly.”

Independent experts who viewed the damage in person or through photographs have told The Chronicle it appeared that rainwater had penetrated the balcony’s wood structure, causing dry rot. Such rot, they said, can happen in just a few years. The Library Gardens, a five-story complex with four residential floors atop a retail level, was completed in 2007.

City inspectors have not yet commented on their investigation. However, on Wednesday they ordered the property owner, the New York investment company BlackRock, to remove a second balcony that the city deemed structurally unsafe and a potential “collapse hazard.”

Balcony collapses

The collapse of the small 8-foot-by-4-foot balcony could be caused by dry rot, experts say. In the photos shown (right), fungal decay is suggested by the discolored wood and blunted, pulpy fibers at the fracture.



Sources: Bernard Cuzzillo, Berkeley Research Company, Photos by Loren Elliott / The Chronicle

John Blanchard / The Chronicle

That balcony, at apartment 305, is directly below the one on the fourth residential floor that broke off at 12:40 a.m. Tuesday, hurling victims to the street. The upper balcony landed upside down on the one below.

“A field investigation revealed the third-floor exterior balcony to unit 305 is structurally unsafe and presents a collapse hazard endangering public safety,” the removal order said.

Bates said, “Evidently, it was not structurally sound to hold people out on the deck. ... It obviously had to do with the wood.”

The mayor indicated that the problems with the balcony had not been caused by the one landing on it.

In addition, balconies at two other apartments in the 177-unit complex have been red-tagged, restricting access to them.

The balconies are accessible by French doors, and are supposed to hold at least 60 pounds per square foot under city and state codes. City officials said the balcony that collapsed was 8 feet 10 inches long and 4 feet 5 inches wide, meaning it should have been able to hold roughly 2,100 pounds. Authorities have said about 13 people were on it when it gave way.

Representatives of Greystar, the South Carolina company that manages Library Gardens, did not return a telephone call Wednesday. In an earlier statement, Greystar said it would work with authorities and an independent structural engineer to learn what went wrong.

A similar statement was released by BlackRock, which bought the complex in 2007.

The architecture firm that designed the complex, TCA Architects of Irvine, did not return calls.

San Jose Problems

Court filings show that Segue Construction, the firm that constructed the building, paid \$3 million in 2014 to settle a lawsuit over “water penetration” problems on dozens of balconies on a San Jose apartment complex.

In a lawsuit filed in Santa Clara County Superior Court in 2010, the owners of the 245-unit Pines at North Park Apartments at 70 Descanso Drive accused Segue of “failing to design the breezeways, private balconies and stairwells at the project in substantial compliance with all applicable local and state codes and according to industry standard.”

Segue blamed the problems on a subcontractor before settling with the apartment building’s owner, Irvine Co. LLC.

One of the lawyers for Irvine, Eric McAllister, said he could not comment on the case because it had been settled out of court.

Sam Singer, a spokesman for Segue, said the suit amounted to a “standard contract dispute.”

He said the balconies in San Jose were “substantially different” from the one that collapsed in Berkeley. In the San Jose case, the building had long balconies, supported from below, that connected several units. The Berkeley balcony was much smaller and extended from the building without substructure supports.

Singer called the case “a typical post-construction lawsuit” and said Segue had “a very good reputation.”

“They have constructed 6,000 apartments,” Singer said. “They have never had an incident like this before.”

The San Jose case wasn’t the only lawsuit claiming Segue botched balcony construction. In 2013, Segue paid \$3.5 million to settle a case brought by the owners of a 109-unit condominium complex that had been completed just three years earlier on El Camino Real in Millbrae.

“It was the exact same mechanism of failure as in Library Gardens,” said Thomas Miller, the attorney who represented the plaintiffs in the case, the Park Broadway Homeowners Association. “The waterproofing system failed. Water got into the structural wood framing for the balconies and dry-rotted out the wood members.”

Thirty-six balconies were deemed unusable and are being rebuilt, Miller said.

“There are good contractors out there and bad contractors,” Miller said. “In our case and in Berkeley, you have to assume they are not playing by the rules.”

Singer said Segue “designs apartment buildings to the specifications of its clients and their architects. In a number of cases, there are design and specification issues that create water intrusion problems. Maintenance is also an issue. Whether a building is one year old or 10 years old, it has to be properly maintained.”

The Berkeley tragedy also raised questions about whether laws governing balconies are tough enough. Bates suggested that they aren’t.

“We need to look at that going forward,” he said.

California’s rules are based on standards developed by the International Code Council.

“The code provides the bare minimum level that has been determined necessary for public safety and occupancy standards,” said Derrick Hom, president of the Structural Engineers Association of Northern California.

Developers or builders can choose to make a balcony stronger or stiffer — but there’s no incentive to do so with regard to marketing a building or making it appear more attractive, elements that tend to drive extra investment.

“Code revision is one of those things where the squeaky wheel gets the grease,” Hom said. “Now balconies might get more scrutiny.”