

# Daily Journal

## **Firm Reaches \$15.6M Construction Defects Settlement**

**By Mark Armao**

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The Miller Law Firm recently secured a \$15.6 million construction defects settlement for the homeowners' associations of the 81-unit La Costa Resort Villas development in Carlsbad.

According to the firm, the settlement represents the largest per-unit payout ever recorded in San Diego County, and one of the largest in the state.

KSL La Costa Development Corp. and G Companies Homebuilding LLC are among the defendants listed in the case, according to court documents.

The condos are affiliated with the adjacent La Costa Resort & Spa, at 2100 Costa Del Mar Road. La Quinta-based KSL purchased the La Costa Resort in 2001 and developed the roughly \$150 million project that added the condos and renovated much of the property, which is now owned by Omni Hotels and Resorts.

G Companies, which has also developed and built homes under the names Cameo Homes and Three G Development, is based in Newport Beach.

Cardiff-based McCabe Architecture, which produced design and construction drawings for the buildings, was also a defendant in the case.

The four condo buildings, completed between 2006 and 2007, were sold to 81 homeowners, many of whom purchased the units as investment properties and were absent property owners. The development was split into two HOAs, one with 20 units and the other with 61 units.

Since the condos were constructed, the HOAs have been faced with repeated and costly repairs, according to The Miller Law Firm.

Under California law, homeowners have a 10-year window following the completion of a project to bring a suit for a construction defect. In 2016, as the deadline approached, The Miller Law Firm filed suits on behalf of the HOAs in San Diego County Superior Court.

The damage largely stemmed from faulty waterproofing on the building's exterior walkways and balconies, said Thomas E. Miller, CEO of The Miller Law Firm.

"Water was getting in and affecting the structural support of the elevated decks and patios," Miller said. "There was a lot of damage."

Although much of the damage was hidden from sight, Miller said, many of the wooden supports for the buildings' elevated walkways had succumb to dry rot. The condition is caused when continually damp wood becomes infested by a species of fungus that feeds on parts of the wood.

Dry rot was determined by investigators to be a contributing factor in the balcony collapse that killed six people at an apartment building in Berkeley in 2015. The Miller Law Firm acted as a consultant for the Alameda County district attorney's office and the city attorney's office in the early stages of the Berkeley case.

While the La Costa villas did not experience a collapse, Miller said the structures had incurred a high degree of damage compared to other projects of equal age.

"There was a lot of decay and dry rot, which required some immediate structural shoring while we continued to investigate the case," Miller said.

The settlement was reached within 19 months through mediation efforts facilitated by Ross R. Hart of Arbitration Mediation Conciliation Center.

Insurance carriers for the defendants settled for upward of \$190,000 per unit, which is significantly higher than the average construction defect settlement, Miller said. Noting that many settlement figures are kept under wraps, Miller said the \$15.6 million payout was the largest per-unit settlement that he knew of in San Diego County.

"A lot of these settlements are confidential, so we don't necessarily see 100 percent of the settlements, but we are certainly aware of them," he said.

Miller, who has been a construction defect attorney for more than 40 years and written multiple books on the practice area, suggested that prospective homeowners do their due diligence when looking at a condo property.

He recommends that homeowners bring in their own building inspector, and research previous maintenance costs by contacting the HOA.

Often, though, homeowners are unaware of defects until it's too late, Miller said.

"Because these are new products when people buy them, and the buildings have not settled in or been through a rainy season or two, these defects begin to show up generally [between two and five] years later,"

Miller said. "A lot of these damages were hidden; you really had to peel away some of the layers to get to the underlying decay and dry rot."