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A Win For Developers: Court Of Appeal Rules That, Under Right To Repair Act, No Claim Is Permitted As To Roof Which Did Not Leak, Which Did Not Fall, And Was Not Completely Manufactured Onsite

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One of the challenges under the Right to Repair Act is the extent of claims which can be made involving various facets of a single-family residence which have not exhibited a direct failure. The most common issues involve roofs that have not yet leaked, portions of which have not yet fallen and were not completely manufactured onsite.

In a lengthy Opinion issued by the California Court of Appeal, 4th Appellate District, the Court in Gerlach v. K. Hovnanian's Four Seasons at Beaumont, LLC (2022) Westlaw 3443648 ("Gerlach case") clarified that a roof is a "manufactured product" within the meaning of the Right to Repair Act only if the roof is completely manufactured offsite and further ruled that, in order prove a roof defect claim under the Right to Repair Act, a Plaintiff must prove that water intrusion has actually occurred or roofing material has fallen from the roof.

The facts of the Gerlach case are relatively common. Defendant developer Hovnanian developed the Four Seasons at Beaumont, a community for adults 55 and over, in Beaumont, California. Two Plaintiffs, Gerlach and Seals, own homes at Four Seasons and filed suit for construction defects. Gerlach closed escrow on residence on March 16, 2006. Seals purchased her residence in August 2015 from the original owners, who closed escrow on that residence in May 2007.

Near the conclusion of the ten-year statute of limitation within which to assert a construction defect claim, Gerlach and Seals served the defendant developer with Notices of Claims under the Right to Repair Act. As relevant to this article, the claims of Gerlach and Seals included reduction of useful life. The parties stipulated that the developer had acknowledged the claims, inspected the homes, made offers to repair, and made various repairs. However, a lawsuit was filed to recover damages.

At the heart of the roof claims were the fact that the roofs did not have any significant leakage. The issue, in substance, was that the roofs would likely leak in the future, and the useful life of the roof was impaired due to that.

The trial court limited the claims that could be made, ruling that it would not allow Plaintiffs to present testimony on the roofs other than specific violations and standards, i.e., that water has entered the structure past beyond the design or actual moisture barriers. The

jury returned a verdict in favor of the developer for one home, and a verdict of less than $2,000 on the other home. Plaintiffs timely appealed.

On appeal, the Court of Appeal acknowledged that there are three provisions relating to roofing under § 896 of the *Civil Code*, i.e., that the roofs should not allow water to enter the structure, that the roofing material shall be installed so as to avoid materials falling from the roof, and, in a catchall, that the roof, and other components, shall be installed so as not to interfere with the product's useful life. In a lengthy Opinion, the Court of Appeal explained that the Right to Repair Act was enacted to address this specific situation where there is little or no water leakage. The Court of Appeal ruled that, where there are no leaks or falling materials, and the roof was not manufactured entirely onsite, there is no claim under the Right to Repair Act.

The Gerlach case is certainly a win for developers and for roofers as it addresses the important issue of a condition that may result in degradation in the future, but has not to date, caused any damage.

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