# California Supreme Court Holds Principal Architects Owe Duty of Care to Future Homeowners

## Author

*Dion Cominos*
*Firmwide Managing Partner*
*415 986 5900*

On July 3, the Supreme Court of California published its decision in *Beacon Residential Community Assn. v. Skidmore, Owings & Merrill.* In short, the court concluded that prime architects designing residential buildings owe a duty of care to future homeowners even though they do not actually build the projects themselves or exercise ultimate control over their construction.

Of importance, *Beacon* involved a demurrer at the trial court level meaning that, on appeal, the Supreme Court was required to accept the facts pled in the plaintiff's amended complaint as true. This included the allegation that the Beacon project's designers provided their services "knowing that the finished construction would be sold as condominiums." It also was claimed that the defendants played an active role throughout the construction process, including coordinating efforts of the design and construction teams, conducting weekly site visits and inspections, recommending design revisions as needed, and monitoring compliance with design plans. For their various services, the designers were reportedly paid $5 million. The plaintiff alleged that negligent design work resulted in several defects, including extensive water infiltration, inadequate fire separations, excessive solar heat gain, structural cracks, and other safety hazards.

***Explanation of Court's Decision***

In reaching its decision that architects owe a duty of care to future homeowners, the court distinguished its earlier holding in *Bily* (limiting the duty of care owed by auditing firms to nonclient third parties) by pointing out that the *Beacon* case involved: (1) a much closer connection between the defendants' conduct and the plaintiff's injury; (2) a far more limited class of potentially affected persons/transactions; and (3) an absence of "private ordering" options that could efficiently protect homeowners from design defects and their resulting harms.

The Supreme Court also distinguished the Court of Appeal's earlier decision in *Weseloh*, noting that the defendants in that case played a materially different role in their construction project in that they had no direct contractual relationships with the owner or general contractor, were paid a limited fee, and did not supervise construction of the subject retaining walls. In the court's words, "*Weseloh* merely suggests that an architect's role in a project can be so minor and so subordinate to the role or judgment of other design professionals as to foreclose the architect's liability in negligence to third parties." Also noteworthy is the fact that *Weseloh* was decided on summary judgment (as opposed to demurrer), thus allowing the trial court to actually test the viability of the plaintiff's claims against an established body of admissible evidence rather than assuming all of the factual allegations to be true.

The *Beacon* court concluded its analysis by applying the so-called *Biakanja* factors in reaching its ultimate determination that a duty of care was owed, noting that: (1) defendants' work was intended to benefit the plaintiff homeowners; (2) it was foreseeable that these homeowners would be among the limited class of persons harmed by negligently designed units; (3) plaintiffs have suffered injury in that the design defects made their homes unsafe/uninhabitable; (4) because defendants were the sole architects on the project, there is a close connection between their conduct and the injury suffered; (5) significant moral blame attached to the defendants' conduct given their role coupled with the awareness that future homeowners would rely on their specialized expertise in designing safe/habitable homes; and (6) the policy of preventing future harm to homeowners relying on an architect's specialized skills supports establishing a duty of care.

Unlike the Court of Appeal, the Supreme Court in *Beacon* chose not to rely on California's Right to Repair Act to support its analysis, observing that even if the act did not impose an independent statutory duty of care, such a duty would nonetheless exist under common law.

***Takeaways***

Although not a total loss for the design community, *Beacon* will have the effect of expanding architects and engineers (A&E) liability to a broader spectrum of claimants and generally keep A&E defendants in lawsuits for longer periods of time. In sum, among the issues clarified by the opinion are the following:

- Extricating designers at the initial pleading stage will prove more difficult so long as a plaintiff can plead nominal facts establishing the existence of a duty of care.
- Designers in prime contractual positions (as opposed to subconsultants) are unlikely to prevail on legal defenses based on a lack of duty.
- The specifics of a designer's contractual arrangements, fee structure, scope of services, and interplay with other project participants will act as major determinants in the question of whether a duty of care exists.

The lingering crucial questions following *Beacon* are a) whether prime designers will always be held to owe a duty of care to future purchasers as a matter of law, and b) whether subconsulting designers will always be relieved of owing such a duty on account of their lower-tier contractual status. Unfortunately, it appears that no hard and fast bright-line rule can be discerned from the opinion, and each case will be decided on its particular facts pursuant to a factually-driven *Biakanja* analysis. This being the case, the probability of designers' succeeding on dispositive motions is likely to be lower in the future.

To read the *Beacon v. Skidmore, Owings & Merrill* opinion, click here.