

California Builders' Right To Repair Is Alive

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The California Supreme Court surprised everyone on December 11, 2013 when it denied Brookfield Homes' request for review of the ruling in the case of Liberty Mutual Ins. Co. v. Brookfield Crystal Cove, LLC (2014) 219 Cal.App.4th 98, which was decided by the Court of Appeal for the Fourth Appellate District Division Three (Orange County). In that case the Court of Appeal held that the Right to Repair Act aka SB800 is *not* the exclusive remedy for a homeowner seeking damages for construction defects that have resulted in property damage. Under the ruling, homeowners may choose to sue builders under common law theories of liability such as strict liability and negligence, in addition to liability under the Act. This ruling made homeowners' compliance with the pre-litigation requirements of the Act optional and thereby put builders' "right to repair" in jeopardy. The ruling undermined the expectations of California's homebuilders who, for the past decade, understood that their liability is limited by the Act and that they have a right to repair.

Since the Liberty Mutual case was handed down, the topic has become a hotbed item with several divisions of the Court of Appeal. On February 19, 2014, the Court of Appeal for the Second Appellate District Division Three (Los Angeles County) issued a ruling against Premier Homes in the case of Burch v. Superior Court 214 Cal.App.LEXIS 159 that, without independent analysis, simply adopted the holding in the Liberty Mutual case.

But on February 21, 2014, the Court of Appeal for the Second Appellate District Division Four (Los Angeles County) ruled in the case of KB Home Greater Los Angeles, Inc. v. Superior Court 214 Cal.App.LEXIS 167 that a homeowner's failure to give the builder an opportunity to inspect and repair a construction defect excused the builder's liability under the Act. Additionally, the Court of Appeal went out of its way to state it had ruled earlier in that case that the Act *is* the exclusive remedy.

The various rulings lay a foundation for ultimate intervention by the California Supreme Court. In the meantime, these opposing cases will be cited by counsel for homeowners and builders alike for opposing positions as they continue to navigate construction defect disputes.

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