

PUBLICATION

Condominium Developers in Texas Can Protect Themselves from Future Lawsuits Through the Use of Declarations

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A Texas court recently affirmed the dismissal of construction defect claims by a residential condominium unit owners' association because it lacked standing to assert claims against the developer, general contractor, and subcontractors of a new high-rise project in Houston. The case involved a high-rise, multi-residential, and retail development with alleged construction defects in the windows and resulting damage from water intrusion into some of its approximately 400 condominium units. The owners' association brought suit against the project developers, the general contractor, and the window subcontractor, alleging negligence, negligent misrepresentation, breach of implied warranty, breach of fiduciary duty, and violations of the Texas Deceptive Trade Practices Act arising from the alleged defects.

The defendants won dismissal by arguing that Section 82.102(a)(4) of the Texas Property Code did not confer standing on the owners' association to bring its claims because the statute expressly excepts any actions prohibited by a condominium's declaration. For this development, the condominium declaration prohibited the owners' association from bringing claims based on alleged defects in the condominium units or common elements. The defendants also asserted that the owners' association lacked common law standing because it did not own, and had no interest in, the units or common areas, and thus suffered no injury from the alleged construction defects.

After having its case dismissed, the owners' association argued on appeal that it had statutory standing, common law standing, and associational standing to bring its claims. The court of appeals disagreed and affirmed the dismissal. The association's statutory standing arguments were rejected because the claims, either brought on behalf of the owners or on the owners' association's own behalf, were all based on alleged construction defects of the condominium window units, which were expressly barred by the declaration. Further, the court rejected the owners' association's common law standing claim because all of the allegedly defective windows were within the condominium units and not part of the common elements falling within the owners' association's maintenance and repair obligations. In addition, the court rejected the owners' association's associational standing claim because the relief sought required proof of each member's individual money damages.

This decision is pertinent to developers and contractors of residential condominiums who wish to provide themselves with enhanced protection from lawsuits over construction defects. It will be interesting to watch whether the decision stands and whether other courts decide to follow.

The case is *Mosaic Residential N. Condo. Association. Inc. v. 5925 Almeda N. Tower LP*, No. 01-16-00414-CV, 2018 WL 5070728 (Tex. App.—Houston [1st Dist.] Oct. 18, 2018).