

Case Study on Defending Property Seller in a Non-Disclosure and Construction Defect Law Suit

-Expert Witness Services and Construction Estimating provided by MFC

We were first contacted in August 2004 by an attorney whose client needed help defending himself against claims of Non-Disclosure and Construction Deficiencies. The subject property was a single family residence built in 1999 in Gilroy, California. The client had bought this existing home from its original owner in 2002, remodeled portions of it, and then sold it in 2003. The new buyer was unhappy. We opened a file and waited until the case developed further.

When the case became active for us, in May 2005, we were asked to review various reports and documents by others, perform a site inspection to review the alleged claims of construction defects and disclosure issues, consider the viability of disclosure issues and to prepare a cost to repair for those issues we deemed warranted repair.

We discovered during the document review that the Plaintiff's construction expert did not provide a cost to "fix" the home and that this expert provided no claimed scope of repair. In fact, it was unclear what the Plaintiff was claiming was wrong with the house.

Instead of a coherent and complete Statement of Claims, we were given a series of observations from two Plaintiff-only site inspections. In order to defend our party, we found ourselves in the ironic position of first writing the construction deficiency and failure-to-disclose claims and then responding to them. It was rumored that the Plaintiff thought he had a million dollar claim including replacing all of the windows, replacing all of the stucco, resetting all of the clay tiles on the roof, improving the site drainage, replacing the stone-covered walkways, replacing and interior courtyard and its planters, replacing travertine tile floors, etc.

We were allowed one inspection, mid-May, at which the Plaintiff team did not present or describe in any way their "issues" to us and the other defendants who were present. Indeed, the Plaintiff expert was not on site, only legal counsel and the Plaintiffs themselves. We found what was, in our opinion, a well-constructed home with some minor, non-structural, construction issues.

We made recommendations for repairs we thought necessary and we provided cost estimates for those repairs. Where our knowledge of the as-built conditions of the home was limited by our having had a single, visual-only inspection and where a recommended repair was achievable in different ways, we were still able to provide numbers for the negotiation: we gave low-high ranges for the repair and spelled out our scope assumptions for the range. The total of our recommended repairs ranged from \$11,000 to \$22,000.

After our thorough diagnosis of what assemblies required repair, our next key contribution to the dispute was our answer to the question of who was responsible for the recommended repairs. We considered the buyer, the seller, both of their real estate agents, the buyer's termite inspector, the buyer's home inspector, the designer of the remodel, and the contractors who performed the remodel.

Our apportionment included the assignment of responsibility for the repairs (and proportional repair costs) to these parties, including to our own client because he had, in our opinion, failed to disclose relevant conditions known to him. MFC delivered its findings accurately and fairly, even though the results were not exactly what our client expected to hear. It is due to our integrity that MFC's findings are respected and cases are often decided per MFC's analysis.

In just a few short weeks, our findings were published in the standard, 3-part report we have developed at MFC:

Section I: This section is intended as an overview, background to and summary of our response. Specific comments for each issue are contained in Section II.

Section II: The item-by-item response contains several fields of information for each issue such as site inspection findings, repair scope, repair cost, and apportionment. The legend for these fields is found on page 1 of Section II.

Section III: 418 Photographs on CD taken during site inspection and selected photos in a photo album.

Our report was submitted to the Plaintiff at the time our inspector's deposition was taken, on June 1st.

By June 10th, the case had settled- with repair costs and apportionment terms very close to those described in our response report. Our client paid less than \$17,000.00 to MFC in exchange for our successful response report against a vague, million dollar claim, a response report that resulted in our client paying out a total settlement of less than \$30,000.00.