

\$10M Construction Defect Verdict in Fire Code Case

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By: Perry M. Adair, In Memoriam - John Cottle, (1952-2018), Sanjay Kurian

Florida attorneys from Becker & Poliakoff won a \$10 million construction defect verdict against a publicly traded developer and an architectural company.

The firm represented a condominium association whose members said they learned after buying units in a six-story New Jersey development that the building was not code-compliant — and that the developer’s parent company, Hovnanian Enterprises, was aware of it.

“Hovnanian and their developer entity, they go right ahead with this [construction] and they sell units in the building, and they don’t disclose the problem to the purchasers,” said Becker & Poliakoff managing shareholder John Cottle of Fort Walton Beach, part of the team that won the June 1 judgment.

The relevant building codes provide for five types of buildings, ranging from the most fire-resistant Type 1 — often a skyscraper — to Type 5, which could be a wood-frame house, Cottle said.

The Grandview I building on the Hudson River was initially conceived as a Type 2 building by the Hovnanian subsidiary, K. Hovnanian at Port Imperial Urban Renewal II, and architect RTKL New Jersey Architects.

“The problem was that the building was designed by the architect with plywood subflooring, and they discovered halfway through the construction that they had plywood subflooring in this Type 2 building,” Cottle said. The architect warned the developer of the issue.

The plan was then to get the development reclassified as a Type 3, which would have allowed plywood — but required masonry exterior walls that the building did not have. New plans were submitted to the town of West New York, but they were never approved, Cottle said.

The problem was first discovered in April 2015, and meeting minutes from

November of that year showed the developer knew the plans to switch to Type 3 had not been approved, the attorney said. But, the plaintiffs alleged, Hovnanian decided to try to ask the mayor's office for a favor instead of working with the building department.

"Email and the minutes of the meeting clearly indicate that they were trying to use 'political capital,' as they say," Cottle said. "There's also a suggestion in those minutes that they were going to resurface a soccer field [for the city] ... They can be read to suggest that that's in exchange for approving this change in construction."

Defense attorneys did not respond to requests for comment by deadline.

At trial in New Jersey, the defense argued the building was safe. The plywood flooring was not a life-safety issue, since fire alarms and exits would allow all residents to safely vacate the building in the event of a fire.

The condo association's attorneys agreed that there was no threat to residents' lives.

"The problem is to the property left behind, because the building doesn't have the fire-resistance capability that the law requires it to have," Cottle said. "The fire will spread faster and it will do more damage than it would had it been built properly. Further, the building is more dangerous to first responders who would have to go into it were it to catch on fire, because if it had masonry walls, those masonry walls are not subject to collapse in intense heat. Whereas the type of walls that this building has ... steel with a brick veneer, those can collapse."

The Becker & Poliakoff team, which also included Matthew Meyers of Morristown, New Jersey, Sanjay Kurian of Fort Myers and Perry Adair of Coral Gables, also had to "pierce the corporate veil," showing Hovnanian was responsible for its subsidiary's actions.

There were several tiers of companies between K. Hovnanian and its publicly traded parent, Cottle said. K. Hovnanian was created just to build the Hudson River development, and money was transferred out of the company once the units were mostly sold.

The plaintiffs persuaded the jury that Hovnanian Enterprises dominated and controlled the subsidiary and used it to perpetrate an injustice, meaning the condo association can collect from the much more deep-pocketed parent company.

The jury assigned \$3 million in damages to Hovnanian, which was tripled to \$9 million, and an additional \$1 million against the architect.

The defense attorneys were Donald Taylor and Richard Byrnes of Wilentz, Goldman & Spitzer in Woodbridge, New Jersey, James Cardenas of Lewis Brisbois Bisgaard & Smith in New York and Gary Chimento of Chimento

McNally in Voorhees, New Jersey.

A case about Grandview II, a companion development, goes to trial in January.

Case: Grandview at Riverwalk Port Imperial Condominium Association v. K. Hovnanian at Port Imperial et al

Case No.: HUD-L-2560-13

Description: Construction defect

Filing date: May 31, 2013

Verdict date: June 1, 2017

Judge: Hudson County Superior Court Judge Jeffrey Jablonski

Plaintiffs attorneys: John Cottle, Fort Walton Beach; Sanjay Kurian, Fort Myers; Perry Adair, Coral Gables; Matthew Meyers, Morristown, New Jersey; Becker & Poliakoff

Defense attorneys: Donald Taylor and Richard Byrnes, Wilentz, Goldman & Spitzer, Woodbridge, New Jersey; James Cardenas, Lewis Brisbois Bisgaard & Smith, New York; Gary Chiumento, Chiumento McNally, Voorhees, New Jersey

Verdict amount: \$10 million