

News Release

**LIVE OAK HOMEOWNERS BREATHING EASIER
AFTER SUTTER COUNTY COURT FINDS CONTRACTOR
IS LIABLE FOR CONSTRUCTION DEFECTS**

Judge Perry Parker Sets Liability at \$800,000

Sixteen homeowners in the community of Live Oak are breathing easier. After years of problems with leaky windows, mold, and cracked and peeling siding and trim, among other troublesome construction defects, they will soon be able to make long-needed repairs to their cluster of homes, thanks to an \$800,000 Sutter County Superior Court decision in their favor.

Ironically part of the American Dream Home Development, the single-family homes, riddled with defects, turned out to be a nightmare for the owners, most of whom are recent immigrants to the United States. The homes were built between 1992 and 2000 by Live Oak Partners.

The American Dream Home Development consisted of 82 homes; owners of 61 of those homes retained Anderson & Kriger's legal services and received a monetary recovery for their construction defects.

Attorneys Clayton Anderson and Matthew Schoech of Anderson & Kriger's Sacramento office represented the homeowners in the 7-day trial at the Sutter County Courthouse. At trial attorneys for general contractor Nate Mayo Construction argued unsuccessfully that he was an employee and/or agent of the developer and not liable. Determining liability for the damages was key to the case.

Judge Perry Parker found Mayo acted independently, being paid for the work in accordance with a fee, not on the basis of time, and that he received tax forms from Live Oak as an independent contractor, plus he paid his own self-employment taxes. Bottom-line the judge agreed with the homeowners that Mayo was negligent in the supervision of the numerous subcontractors hired to build the homes, who were themselves negligent in their work, with the resulting evident in the severe damage to the plaintiffs' homes to the tune of \$800,484.66 for cost of repair and out of pocket expenses. Prior to trial, Live Oak homeowners settled with 23 subcontractors and the developer, Live Oak Partners, for \$261,294.92, boosting the total recovery for the homeowners to \$1,061,779.58.

Attorneys for the homeowners successfully contended Mayo's work fell well below the standard of care for his profession.

"As the general contractor Mayo was expected to supervise subcontractors and had the duty to do so," noted Clayton Anderson. "In the three to four months it took to build each home Mayo should have inspected every stage of construction and supervised every

subcontractor who worked on the project. Instead, Mayo's supervision fell well below the standard of care of that required by a general contractor whose job it is to comply with local building codes and industry standards and to ensure that the homes will be constructed free from defects."

Evidence was presented through photographs and expert testimony showing significant resulting damages to numerous areas of the Live Oak homes. Anderson enumerated the defects as the improper installation of the windows, roofs, framing, flooring, and gypsum board; plus improper grading of the site before construction began, all of which resulted in water intrusion and mold growth.

"Because various other damages resulted from these defects there is property damage recoverable under the law," Schoech added. "Both the defect and the damage are required to be repaired."

The case hinged on determining who was responsible. "Mayo was in the position of power to ensure the quality of the construction. Subcontractors did not get paid until Mayo signed off on their work. He decided who got paid and when.

"Had Mayo properly supervised the construction of the homes he simply would have had the subcontractors return to the site to repair their negligent work. Had Mayo held the subs feet to the fire, so to speak, perhaps we would not be where we are today." Schoech said the sheer volume of over-driven nails in siding, missing caulking around window fins and trim, improperly stapled roof shingles – all added up as proof of Mayo's negligent supervision.

In court Mayo testified it took three to four months to build each house, and only about five homes were built at any one time. Construction of the Live Oak project homes occurred over a span of 10 years. Anderson concludes this was not a rapid build-out. If it had been, the builder might have a leg to stand on, he said.

"Surely," states Anderson, "given this long time frame, there was time for Mayo to adequately supervise every element of the construction of these 16 'dream homes.' Had he supervised the subcontractors, the homes would not have been riddled with defects as they were."

Schoech pointed out the Live Oak homes were built in such a manner that "these simple, hardworking homeowners were left without a chance."

"There even was testimony that the homeowners were told they should repaint and caulk their windows, doors and wall boards approximately every three to five years. However, the blatant lack of caulking, lack of back priming, defective siding installation, defective roof installation, 'olè' paint job, and inadequate site grade for starters, left the homeowners in such an exposed position that the homes rapidly deteriorated.

“Within three to five years from the original purchase, the homes were a ‘lost cause,’ ” he said.

Schoech asserted the homeowners had the right to rely on Mayo that the caulking and painting were done prior to their taking possession of the home.

“Mayo testified that he orally advised the homeowners on the initial walk through that painting and caulking should be done every three to five years. But he did not advise the homeowners that there was a good chance no caulking and very little paint was ever applied to their homes to begin with.

“These homeowners were behind the eight-ball the moment they walked in the door,” Schoech said. “Three to five years into ownership of the home, the damage was already done. Had Mayo supervised the construction of the homes in a reasonable manner, the damages to plaintiffs’ homes would have been wholly avoided.”

Several homeowners from the culturally diverse community in Live Oak testified at trial about the severe problems they experienced in their homes from the moment they were handed the keys. Many of the homeowners immigrated to the United States and used either Punjabi or Spanish interpreters to effectively interpret their testimony.

Live Oak is a community north of Yuba City on Highway 99. The cluster of homes is in the northeast area of town, west of Highway 99 and north of Pennington Road. Streets involved include Erika Way, Corrine Court, Devin Court, Sabina Court, and Sean Drive. Specialists in homeowner rights and construction defect law, Anderson & Kriger has six offices in California. The Sacramento office, which services homeowners in Sutter County and all of Northern California, is located at 3831 North Freeway Blvd., Suite 110, in Sacramento. For more information, call 916-569-1940 and ask to speak with Matthew Schoech or his paralegal, Brenda Graham.

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