

NO NOTICE? THEN NO DOCUMENTS FOR YOU!

Author(s): Trainor Fairbrook

The Court of Appeal, First Appellate District, recently concluded that homeowners must first serve notice of a construction defect claim under the Right to Repair Act prior to a builder being obligated to respond to the homeowners' request for documents under the Act. *Darling v. Superior Court* (2012) 211 Cal.4th 69.

The dispute that forms the basis of this case arose when the owners of 86 single family homes in Fairfield, California, requested documents from Western Pacific Housing, Inc. pursuant to section 912 of Title 7 of the Civil Code, section 895, et seq., commonly referred to as SB 800 or the Right to Repair Act ("Act"). The purpose of the Act is to give a builder the opportunity to resolve a homeowner's construction defect claim in a fast and non-adversarial manner, to provide for the prompt and fair resolution of construction defect claims, as well as to provide procedures for the early disposition of construction defects.

The builder acknowledged the homeowners' request for documents, but refused to comply with the document request on the grounds that the request was premature. The builder argued the homeowners did not provide written notice to the builder of any construction defect claims as was required under section 910(a) of the Act. The homeowners construed this response from Western Pacific as a refusal to comply with the pre-litigation procedures set forth in the Act and filed the lawsuit, seeking damages arising from the alleged defective construction. Pursuant to the terms of the Act, a homeowner may proceed with litigation without following the pre-litigation procedures set forth in the Act in the event that the builder fails to comply with the terms of the Act.

The builder filed a Motion to Stay the litigation under section 930(b) of the Act on the grounds that the homeowners had not properly completed the pre-litigation procedure and requested the documents prematurely. Pursuant to section 930(b) of the Act, a builder may file a motion for stay of the new litigation if the homeowners and the builder agreed to the pre-litigation

procedure set forth in the Act and the homeowners failed to properly abide by the procedures set forth in the Act. The homeowners opposed Western Pacific's Motion to Stay, arguing that Western Pacific lost its right to seek a stay under section 930 because it had failed to comply with the builder's statutory requirement to respond to the homeowners' document request under section 912 of the Act.

The Court analyzed the issue set before it, which was: Must a homeowner serve notice of a construction defect claim under section 910(a) of the Act before a builder is obligated to respond to a homeowner's request for production of documents under section 912(a) of the Act? The Court acknowledged that there is nothing in the Act that explicitly states that a homeowner must first file a claim under section 910 of the Act before making a request for documents to the builder under section 912 of the Act. However, upon review of other courts that have discussed the intent of the Right to Repair Act, the language of the Act itself taken in complete context, as well as the statutory scheme and legislative intent of the Act, the Court determined that a homeowner must first file a notice of claim prior to seeking documents from a builder under the Act.

Of particular importance to the Court's analysis was the statutory purpose of the Act, which was to give builders the opportunity to resolve construction defect claims in a quick and non-adversarial manner. To foster this purpose, the Court determined that the point was to "help resolve defect claims that the homeowner already has, not to open up the builder's document files to homeowners who have no claim and perhaps never will." The Court disregarded the homeowners' arguments that were based on assumptions that the Act was created to empower homeowners to get documents from builders whether they had a defect claim or not.

The Court acknowledged that, in the event the homeowners and the builder had agreed to some other form of procedure concerning the handling of construction defect claims other than the Act, then that express agreement would prevail. However, in the event that the homeowners and the builder did not opt out of the pre-litigation procedures set forth in the Act, then the purpose of the Act should prevail.