

# Couple Can Amend Fraud, Building Code Violation Allegations, Judge Rules

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Mealey's (March 20, 2017, 1:26 PM EDT) -- TAMPA, Fla. — A couple claiming that the defective construction of their home allowed for water infiltration and mold growth that led to the death of their daughter can amend their allegations that the home builder violated the Florida Building Code and engaged in fraud, a federal judge in Florida ruled March 17 in granting in part the builder's motion to dismiss (Rohan B. Goldson, et al. v. KB Home, et al., No. 17-cv-340-T-24 AEP, M.D. Fla., 2017 U.S. Dist. LEXIS 38426).

(Order available. Document #09-170407-013R.)

U.S. Judge Susan C. Bucklew of the Middle District of Florida held that Rohan and Suzette Goldson's fraud claim was a repackaged version of their breach of contract claim and that the couple should explain why they could not have noticed that KB Home and KB Home Tampa LLC's (collectively, KB Home) allegedly faulty installation of the windows in their home was not noticeable to the common layperson until 2013. The judge further found that the couple's breach of contract claim was timely because they sufficiently alleged that they did not discover the defects in the construction of their home until 2013.

The Goldsons, along with their daughter Davie, moved into a home built by KB Home on June 23, 2006. According to the Goldsons, KB Home negligently built the house and failed to prevent water from penetrating and otherwise leaking into the building.

## Mold Infestation

In 2007, Davie began experiencing medical problems and was eventually diagnosed with cancer. The cancer, if treated, had a 98 percent remission rate. Davie was treated, underwent chemotherapy and a bone marrow transplant and was discharged home in March 2013. As a result of her cancer treatment, Davie was immunosuppressed.

After returning home, from March through September 2013, Davie began experiencing medical problems again. Davie's doctors said her symptoms were not a result of the cancer or the transplant and, therefore, the Goldsons should check their house for possible

allergens. When the couple had their house checked, they learned that hairline cracks existed in the stucco of the house, and mold was detected.

The couple informed KB Home of the defects and the builder attempted to fix them. The builder then told the Goldsons that it was safe to have Davie move back into the house. However, the builder did not correct the extensive mold infestation, and the house was rendered unlivable. As a result of the mold and her immunosuppressed system, Davie suffered substantial medical problems and died June 9, 2015.

#### Suit Filed

On June 23, 2016, the Goldsons filed suit in the 13th Judicial Circuit for Hillsborough County, Fla., against KB Home. KB Home removed the action on Feb. 10, 2017, based on diversity jurisdiction and damages in excess of the \$75,000 jurisdictional threshold. The plaintiffs' complaint included claims for breach of contract, fraud, violation of the Florida Building Code and wrongful death. KB Home moved to dismiss the Goldsons' claims for breach of contract, fraud and violation of the Florida Building Code on the ground that the allegations were untimely.

The defendants moved to dismiss three counts — breach of contract, fraud and violation of the Florida Building Code — based on statute of limitations grounds and the fact that the fraud claim is not independent of the breach of contract claim.

#### Timely Allegation

KB Home contended that the five-year limitations period set forth in Florida Statute Section 95.11(2)(b), Fla. Stat. § 95.11(2)(b), barred the plaintiffs' breach of contract claim. KB Home noted that the Goldsons took possession of the house (and thus construction was finished) on June 23, 2006, and did not bring this lawsuit until 2016. The Goldsons countered that KB Home was relying on the wrong subsection of the statute, and instead, Florida Statute Section 95.11(3)(c), Fla. Stat. § 95.11(3)(c), applies. Section 95.11(3)(c) provides a four-year limitations period for actions founded on the construction of an improvement on real property. Furthermore, the couple pointed out that they have alleged a latent construction defect, and under the statute, the time for filing a claim starts running "from the time the defect is discovered or should have been discovered with the exercise of due diligence" as long as the lawsuit is filed within 10 years after the date they took

possession of the house.

The Goldsons explained that they did not discover the defective construction and mold growth until 2013. As such, the plaintiffs contended that their lawsuit was timely filed because it was filed within four years after discovering the latent defect and within 10 years after they took possession of the house.

Judge Bucklew agreed with the Goldsons.

#### Amendments Needed

KB Home also asserted that the Goldsons' fraud claim was duplicative of their breach of contract claim. Judge Bucklew sustained the argument, but allowed the couple to amend their allegations.

The builder then argued that the cause of action for violation of the Florida Building Code was barred by the four-year statute of limitations. According to KB Home, the plaintiffs should have discovered that the windows were improperly installed in 2006. The Goldsons countered that they could not have known about the defect until they smelled mold in 2013. Judge Bucklew ruled that the plaintiffs need to explain why they could not have discovered the defects with the installation of the windows until 2013.

Spencer T. Kuvin of the Law Offices of Craig Goldenfarb in West Palm Beach, Fla., represents the Goldsons.

Benjamin Reid of Carlton Fields Jordan Burt in Miami and Nicholas Alexander Brown of Carlton Fields in Tampa are counsel for KB Home.

(Additional documents available: Motion to dismiss. Document #09-170407-014M. Opposition brief. Document #09-170407-015B.)