

Mold/Damage Claim: California Appellate Court Addresses Causation Question



Walter Wright, Jr.

wwright@mwlaw.com

(501) 688.8839

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A California Court of Appeal ("Court") addressed in a July 2nd opinion an issue associated with a damage claim involving mold/water intrusion. See *Longmire v. 1022 10th Street, Inc.*, Court of Appeal of California, B288063.

The Court reviewed a jury's finding of whether a defendant was a substantial factor in the damages allegedly caused by the water intrusion.

Plaintiff Longmire's condominium unit suffered water intrusion-related damage from leaks originating in a common area. As a result, Longmire sued her homeowner's association ("HOA").

The HOA agreed to make certain repairs to the common areas pursuant to an August 2012 settlement agreement. Therefore, Longmire released any claims against the HOA predating the agreement.

The HOA failed to make the promised repairs more than two years after the execution of the settlement agreement. Longmire again sued the HOA. The suit alleged:

- Breach of the settlement agreement
- Negligence
- Breach of fiduciary duty

A jury awarded Longmire \$308,150 in damages.

The HOA did not contest the breach of its contractual, fiduciary, or duty of care obligations. It argued that Longmire failed to introduce evidence that the HOA's post-August 2012 conduct caused the alleged damage. Such damages were alleged to have been incurred by Longmire prior to the 2012 settlement agreement. If so, they were subject to the general release in that agreement.

The Court on appeal addressed whether there was substantial evidence to support the jury's finding that post-August 2012 breaches caused Longmire's damage. Evidence reviewed included testimony that there was further leakage that entered the unit. Damages alleged by Longmire included physical injuries from the post-2012 leaks such as:

- Recurring sore throats
- Respiratory infections
- Migraines
- Chronic Fatigue

Such symptoms were indicated before August 2012 but alleged to have become worse after that date.

The jury heard testimony that Longmire hired a contractor to perform mold testing in her unit and saw a physician specializing in mold. The physician is stated to have testified with reasonable medical certainty that the wet condition of the condominium after August 2012 caused her to get sick. The opinion includes a discussion of molds and the physician's review of the mold inspection report. An additional expert (Certified Microbial and Indoor Environmental Consultant) testified on behalf of Longmire that she was likely exposed to mycotoxins after 2012.

The Court discussed causation as applied to tort claims in discussing the HOA's challenge. It noted that:

. . . causation is established for purposes of California tort law if the defendant's conduct is a 'substantial factor' in bringing about the plaintiff's injury. . . .The substantial factor standard is a relatively broad one, requiring only that the contribution of an individual cause be more than negligible or theoretical.

The Court stated that substantial evidence supported the jury's causation finding, citing:

- Evidence that the unit suffered post-2012 water intrusion
- Evidence regarding additional damage to the interior of the condominium from subsequent leaks
- Indication that water intrusion after 2012 caused additional mold to grow
- Testimony from the plaintiff, physician, and environmental consultant that additional water/mold damage was a substantial factor in the harm after 2012

A copy of the opinion can be found [here](#).