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Beacon: Signaling a New Duty to Future Homeowners in California?

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The California Supreme Court appears to have severely curtailed the scope of the no-duty defense typically employed by design professionals at the pleading stage in construction defect actions brought by future purchasers of real property. *Beacon Residential Community Assn v. Skidmore, Owings & Merril LLP* ("*Beacon*") (2014) 59 Cal. 4th 568. The *Beacon* court held that "an architect owes a duty of care to future homeowners in the design of a residential building where . . . the architect is a *principal architect* on the project." *Id.* at 571. It further held that the duty of care exists even when the architect does not actually build the project or exercise ultimate control over construction. *Id.*

This represents a change in the application of law articulated in *Weseloh Family Ltd. Partnership v. K.L. Wessel Construction Co., Inc. ("Weseloh") (2004) 125 Cal. App. 4th 152,* in which the court held a design engineer owed no duty to a property owner absent privity of contract. After *Beacon*, the *Weseloh* defense may no longer apply to those providing professional design services who are "not subordinate to other design professionals." *Id*. This article discusses the *Beacon* decision, its underlying case law, and its practicable impact.

I. The *Beacon* Decision

Facts

In *Beacon*, a homeowners association on behalf of its members sued a condominium developer and various other parties over multiple construction design defects. *Beacon,* 59 Cal. 4th at 571. Two of the defendants were architectural firms who provided architectural and engineering services under a contract with a developer for a fee of $5 million. *Id.* at 571-572. It was alleged that these firms designed the homes in a negligent manner but did not make the final decisions regarding how the homes would be built. *Id.* at 572. It was further alleged that these firms provided their services with knowledge that the finished homes would eventually be sold to individual purchasers. *Id.* at 571-72. Finally, Plaintiff alleged that defendants had a substantial role in the construction of the condos as they were the only architects on the project and made continuing design recommendations throughout construction. *Id*. at 572.

Relying on *Weseloh, supra,* the trial court sustained a demurrer in favor of the architectural firms reasoning that there "is no duty owed by the architect to the future condominium owners" as long as final construction decisions rested with the developer. *Beacon*, 59 Cal. 4th at 572-73. Distinguishing *Weseloh* on its facts and procedure the Court of Appeal reversed and held that such a duty did exist. *Id.* at 571. The California Supreme Court granted review. *Id.*

California Supreme Court's Holding and Analysis

The Supreme Court affirmed the Appellate Court holding that "an architect owes a duty of care to future homeowners where the architect is a *principal architect* on the project - that is, the architect, in providing professional design services, is not subordinate to any other design professional - even if the architect does not actually build the project or exercise ultimate control over construction

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decisions." *Beacon*, 59 Cal. 4th. at 581.

The *Beacon* Court applied what are known as the *Biakanja* factors to the facts alleged in the complaint. *Beacon*, 59 Cal. 4th. at 586. More than 50 years ago in *Biakanja v. Irving* (1958) 49 Cal.2d 647, the Court held that a balancing of these factors determines whether a duty should exist in the absence of privity:

1. Extent to which the transaction was intended to affect the plaintiff;
2. Foreseeability of harm to the plaintiff;
3. Degree of certainty that the plaintiff suffered injury;
4. Closeness of connection between defendant's conduct and the injury suffered;
5. Moral blame attached to defendant's conduct; and
6. Policy of preventing future harm.

Id. at 650. This is a fact-intensive analysis. In *Biakanja,* the court found that these factors supported the existence of a duty of a notary public who negligently drafted a will to the intended beneficiary of the will. *Id.* at 651. Likewise, the *Beacon* Court found that the facts alleged in the complaint were sufficient to establish the existence of a duty under a *Biakanja* factors analysis. *Beacon*, 59 Cal.4th. at 586.

Beacon factually distinguishes *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, a case that requires plaintiffs to establish privity in negligence suits against auditors. 59 Cal.4th. at 581-585. In *Bily,* investors of a company sued the accounting firm hired by the company to conduct an audit. 3 Cal.4th at 376-377. The investors alleged that the audit was conducted negligently which led to the company's bankruptcy. *Id*. at 377-379. In applying the *Biakanja* factors, the *Bily* Court reasoned that the consequences of finding the existence of a legal duty based solely on a rule of foreseeability would result in vast or limitless liability. *Id.* at 406. Thus, the Court added three policy considerations to the *Biakanja* factors:

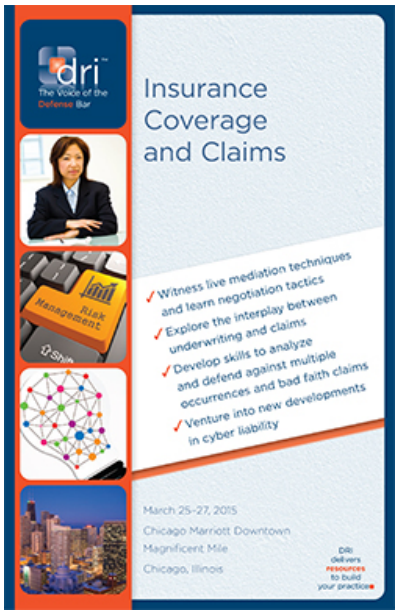
1. The potential liability is disproportionate to fault;
2. The third party's ability to privately order the risk by contractual arrangements; and
3. The effect of the imposition of a duty to foreseeable users, *i.e.,* if the potential liability has a deterrent effect.

Id. at 399-406. *Beacon* distinguishes *Bily* on three main points. First, compared to an auditor's secondary role played in the financial reporting process, the defendant architects had a primary role in the design of the project that bore a close connection to plaintiff's alleged injury. 59 Cal.4th. at 581-583. Second, the defendant architects' work was intended to affect a specific, foreseeable, and well-defined class. *Id.* at 583-584. Third, the average homebuyer is more akin to a "presumptively powerless consumer" who lacks the sophistication of a person who reads and relies on audit reports. *Id.* at 584-585.

In *Weseloh*, *supra*, the Court applied the *Biakanja* and *Bily* factors and held that no duty was owed by a design engineer to a property owner absent privity of contract. 125 Cal. App.4th at 167-173.The *Beacon* defendants argued that the analysis of *Biakanja* factors in their case was no different than in *Weseloh*.59 Cal.4th. at 586.However, the *Beacon* Court distinguished *Weseloh* on its facts and procedure and noted that its holding was expressly limited to its facts.*Id.* 587.In *Weseloh,* the property owner contracted with a general contractor to build an automobile dealership.*Id.* at 159-160.A subcontractor built retaining walls for the project.The subcontractor hired engineers to design these retaining walls for a fee of $1,500 or $2,200.*Id.* A portion of these walls failed.*Id.* The *Beacon* Court distinguished *Weseloh* factually based on the limited role of the engineers in *Weseloh* in contrast to the *Beacon* defendants who were the sole entities providing architectural services on the project.*Id.* at 586-587.

Also distinguishing *Weseloh* procedurally, *Beacon* notes that *Weseloh* was decided at the summary judgment phase based on plaintiffs' failure to produce evidence showing how and the extent to which their damages were caused by the asserted design defects.*Id.* at 587.This failure of evidence of causation not only informed *Weseloh's* duty analysis under *Biakanja* and *Bily*, but also provided an independent basis for granting summary judgment.*Id.*The facts alleged in the *Beacon* complaint did not present this same type of causation problem.*Id.*

II. Practical Considerations



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While the *Beacon* ruling repeatedly references architects, there is little doubt it also applies to other design professionals, such as engineers.*See Beacon*, 59 Cal.4th at 573. As stated above, *Weseloh* once provided these design professionals with a no-duty defense that could be asserted at the initial pleading stage in construction defect actions. *Beacon* severely curtails that defense, and will thus have the effect of expanding design professionals liability to a broader type of claimant and make it more challenging to successfully defeat claims by third-party purchasers/owners in the early phases of litigation.Moreover, because *Beacon* requires a case be decided on its particular facts pursuant to a factually-driven *Biakanja* analysis, the success rate of dispositive motions is likely to decrease.

As harsh as the *Beacon* decision may first seem, it is not the end of the "no duty" defense altogether (*e.g.,* a no-duty defense may still be asserted if a design professional was subordinate to another design professional.)*Beacon* did not overrule *Weseloh*.Instead, it says that *Weseloh* should not be interpreted so broadly as to state that design professionals never have a duty to third parties. *Beacon* also does not foreclose other available defenses such as defenses based upon failure to follow the design and apportionment of liability.

III. Conclusion

In regards to negligence claims against design professionals not in privity with the plaintiffs, the *Beacon* decision may expand the duty of care imposed on design professionals in California. This presents a challenge to similar defendants when attempting to extricate itself at the initial pleadings stage based on a no-duty defense where privity is absent. Counsel in other jurisdictions should be mindful of the *Beacon* decision as plaintiffs may argue that the court should take a *Beacon*-approach rather than look primarily to privity or control over the construction process.

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