

Daily Journal

VERDICTS & SETTLEMENTS

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CONSTRUCTION

CONSTRUCTION DEFECT

Remodel

VERDICT: \$1,992,500.

CASE/NUMBER: Dawn

Kearney, Patrick Kearney v.

Douglas Ferguson and Douglas
Construction Company /
SCVSS112299.

COURT/DATE: San Bernardino
Superior / Jan. 9, 2007.

MEDIATOR: Debra L. Mellinkoff.

ATTORNEYS: Plaintiff - Shawn D.
Morris, William A. Lemkul (Morris
& Sullivan LLP, San Diego).

Defendant - Tina M. Pivonka,
Patrick Prindle (Mulvaney, Kahan
& Barry, LLP, San Diego); Robert
Morris (Law Offices of Robert
Morris, San Bernardino).

TECHNICAL EXPERTS: Plaintiff
- John Bardin, architecture, San
Diego; Peter Curry, structural
engineering, San Diego; Dave
Bennett, general contractor, Lake
Arrowhead; Andrew Puccetti,
Ph.D., industrial hygienist, Corona
del Mar; Harvey Kreitenberg,
mechanical and plumbing, Los
Angeles.

Defendant - Carl H. Josephson,
S.E., structural engineering, San
Diego; John Hardisty, general
contractor, National City; Larry
Lindeen, industrial hygienist, San
Diego.

FACTS: Action for construction
defect involving the remodel of
Plaintiffs' vacation home located
in Lake Arrowhead, California.
Plaintiffs' Lake Arrowhead home
in the County of San Bernardino
("subject property"). Plaintiffs
purchased their Lake Arrowhead
property in 1999 and contacted a
local builder, Douglas Ferguson,
and entered into an oral contract
whereby Doug Ferguson
Construction, Inc., agreed to
remodel the Kearney vacation
home.

Ferguson agreed to remodel
the interior and exterior of
the Kearneys' second home,
including, without limitation,
concrete, masonry, plumbing,
electrical, framing, drywall,
roofing, windows, doors, decking,
waterproofing, foundations, patios,
flooring, painting, cabinetry and
fixtures ("work"). Defendant
Bryant Bergeson was brought
in to design and engineer the
remodel of the subject property.
Mr. Bergeson's company, Kadtec,
performed the design and drafting
services, and Mr. Bergeson
was the civil and/or structural
engineer of record on this project.
Defendant Bryant Bergeson
settled before trial.

Ferguson completed his remodel
work in approximately December
1999, and the remainder in
December 2001. The Kearneys
eventually discovered that water
damage was occurring at the main
level of the home at and around
the lower master bedroom deck.
Ferguson was called out and he
attempted to fix the problem.

Problems persisted, however, and
Ferguson was called out again and
again with no success. Ferguson
ultimately abandoned the job
refusing to conduct any further
repair efforts. The Kearneys
then asked a highly-experienced
local contractor, Dave Bennett, to
inspect the house and determine
the cause of the leak and perform
repairs

Mr. Bennett determined that
the deck leaks were caused
by improper construction and
flashing. The Kearneys then
hired John R. Bardin, AIA, GC, to
conduct a complete inspection and
analysis of the construction. John
Bardin discovered a multitude
of code violations and life-safety
construction defects. Given the
extreme nature of defects and
problems, plaintiffs filed suit
against defendants on Feb. 2, 2004.
As the case progressed, numerous
additional defects were discovered
and brought to the attention of
defendants.

Defendants refused to accept the
disputed items as construction
defects or take responsibility for
their defective work. Ultimately,
plaintiffs were forced to try the
case.

JURY TRIAL: Length, 18 days;
Poll, 12-0; Deliberation, two days.

RESULT: Verdict in plaintiffs' favor
for \$1,992,500.

OTHER INFORMATION: Pending
Motion for Costs and pre-judgment
interest as plaintiffs beat a C.C.P.
998 Offer to Compromise of
\$1,399,999.99.