

# VERDICTS & SETTLEMENTS

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## CONTRACTS

### BREACH OF CONTRACT Indemnification/Negligence

VERDICT: \$340,976.

CASE/NUMBER: Davidson v.  
Master Design Drywall / GIC851672.

COURT/DATE: San Diego Superior  
/ Aug. 2, 2007.

MEDIATOR: Al Clarke.

ATTORNEYS: Plaintiff - Shawn D.  
Morris, Valerie Silverman (Morris &  
Sullivan, San Diego).

Defendant - John A. Simpson,  
Elizabeth A. Pechota (Simpson,  
Dehmore, Greene, LLP, San Diego).

TECHNICAL EXPERTS: Plaintiff  
- Robert W. James, architecture,  
Escondido.

FACTS: Plaintiffs, collectively referred to as "Davidson Communities," a premier developer and general contractor in Southern California, constructed a multi-million dollar development known as Cielo in Rancho Santa Fe, San Diego, California, in or about 2000. In 2005, two homeowners in Cielo contacted Davidson Communities regarding water intrusion, mold and related damage at their homes. Davidson investigated the issues and contacted the subcontractors who physically constructed these homes and whose work potentially gave rise to the water intrusion.

Davidson Communities hired architectural expert Robert W. James to thoroughly investigate the source of the water intrusion at both homes. According to defense counsel, during the course of the investigation, Mr. James opined that the plaster subcontractor, Master Design Drywall Inc. dba Pacific Lath and Plaster was responsible for a portion of the defective workmanship at both homes. According to plaintiff's counsel, during the course of the investigation, it was determined that the plaster subcontractor, Master Design Drywall Inc. dba Pacific Lath and Plaster was primarily

responsible. According to plaintiff's counsel, Master Design Drywall Inc. dba Pacific Lath and Plaster failed to properly install lath to prevent water from entering the home and failed to completely stucco the homes. Robert James found several (defense counsel contended seven) penetrations though the building paper and cracking in the plaster system. Through water testing of the building, Mr. James found water entering the building cavity through the penetrations. At the other property, Robert James observed gaps in stucco and incomplete waterproofing at the top of column caps allowing water to enter the building cavity.

Based on the observations, testing and recommendations of Robert James, Davidson Communities asked the sub-trades at issue, including Master Design Drywall Inc. dba Pacific Lath and Plaster, to make the necessary repairs to their work and the damage caused by the deficiencies.

The subtrades, including Master Design Drywall Inc. dba Pacific Lath and Plaster, failed to make the repairs requested by Davidson at these two properties. (According to plaintiff's counsel, the subtrades refused to participate in the repair efforts). Davidson Communities then decided to undertake the suggested repairs to the two homes at issue. The repairs lasted in excess of six months and required one family to be relocated for approximately five months.

At one home Davidson Communities re-plastered two elevations of a 4,000 square foot home, mold remediation and repair of all resulting damage. At the other home, Davidson Communities re-fabricated the column caps and repairs in the resulting damage. Other trade contractors were identified as the additional responsible parties.

Other than the defendant, all contractors involved in the construction of these homes chose to settle Davidson Communities' claims before trial. Upon the refusal of Master Design Drywall, Inc. dba Pacific Lath and Plaster to assist Davidson Communities in the repairs, Davidson Communities filed an action for indemnification, breach of contract and negligence.

### PLAINTIFF'S CONTENTIONS:

Davidson Communities argued that the primary cause of the water intrusion was a result of the defective lathing performed by Master Design Drywall Inc. dba Pacific Lath and Plaster. This position was supported by the investigation and testing of Robert James and the testimony of the homeowners, mold remediation companies, and Davidson Communities customer service personnel.

Plaintiff's counsel asked the jury to award damages in the amount of \$342,000 for the cost to repair and reasonable investigative costs.

### DEFENDANT'S CONTENTIONS:

Through the repairs and trial, Master Design Drywall Inc. dba Pacific Lath and Plaster denied any responsibility for its defective work or resulting damages.

JURY TRIAL: Length, eight days;  
Poll, 12-0; Deliberation, one day.

RESULT: Verdict for \$340,976.

FILING DATE: Aug. 1, 2005.