



## NEW JERSEY LAWYER

### **Alert: Contractors on hook to condo boards**

By: Kris W. Scibiorski  
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An Appellate Division ruling in a 15-year-old legal battle over materials used to build one of Jersey City's first, high-end condo developments stands as a major victory for the thousands of condo associations across the state, and possibly the nation.

According to *Port Liberte Homeowners Association v. Sordoni Construction Company*, the associations can make Consumer Fraud Act and common law claims against contractors and suppliers who worked on the condos before the associations even came into existence, as long as the project was registered as a condo development.

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Now, associations can go after the manufacturers and contractors responsible for the building defects.

"This is a precedential case, and the decision makes all the sense in the world," said Drasco of Lum Drasco & Positan.

The decision overturns a 2004 summary judgment for the defendants by Hudson County Assignment Judge Maurice J. Gallipoli, who found the association did not have standing to assert claims against Dryvit, a manufacturer of insulation used in the buildings.

Dryvit was the only one of the dozens of original defendants that did not settle their disputes with the association, and filed a summary judgment motion.

In 2004, Judge Gallipoli wrote that since the associations did not exist at the time of construction, they could not have relied on Dryvit's representations about the products.

However, Appellate Judge William P. Gilroy's opinion makes clear that "a condominium association is the intended beneficiary of a developer's actions," and so "any misrepresentations made to the developer were essentially made to the associations."

Gilroy said the trial court's denial of standing to the association "produces an unjust result and is contrary to the legislative scheme permitting" associations to sue for damages to the buildings' common elements.

The opinion relied on both the state's Condominium Act, which says the associations "step into the developer's shoes," as well as New Hampshire and California cases in which similarly positioned condo associations were able to recover for negligence occurring before their formation.

**A full text of *Port Liberte*, Facts-on-Call Order No. 93551 can be ordered from NJL Online or by calling 800-670-3370.**

Gilroy also noted the trial court was wrong in dismissing the plaintiffs' Consumer Fraud Act claims, which "should be construed liberally in favor of the consumers."

"The ruling is a significant expansion of potential liability for contractors and product manufacturers," said John Randy Sawyer of Stark & Stark in Lawrenceville, who appeared as *amicus* for Community Associations Institute.

"If the trial decision stood, people who come along and buy condos would not have any claims against the contractors and manufacturers," he said.

Sawyer said the ruling already is having an impact, saying many manufacturers will have to stop relying on Gallipoli's 2004 decision.

According to the appeals court, since "any representations or omissions made to" the developer "were made after the project had been registered" as a condo development, Dryvit was on notice that "the associations were the intended end-users of its products."

"We determine that (the developer's) reliance on Dryvit's representations is as if relied upon by the associations."

The appeals panel also included Judges Donald S. Coburn and Rudy B. Coleman. Andrew P. Fishkin of Edwards Angell Palmer & Dodge in Short Hills represented Dryvit.