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Construction Officials & Municipalities: Immune from Liability for Construction Defects?

Many residents and laymen naturally assume that a municipality or building inspector that issues a certificate of occupancy should be held liable if they make a mistake or negligently issue the certificate. However, most people are surprised to learn that, as a matter of law, a municipality is not liable in tort for negligently granting a certificate of occupancy. In *Fiduccia v. Summit Hill Constr. Co.*, 109 N.J. Super. 249 (Ct. Ct. 1970), the court had the occasion to address whether a municipality could be held liable to a landowner for negligently granting a certificate of occupancy. The court concluded that the municipality could not.

The facts of the case are quite straightforward. Defendant builder built a home for plaintiff homeowner for which the municipality issued a certificate of occupancy. The homeowner then instituted suit against the builder and municipality alleging that the builder improperly graded the land and failed in other respects to construct the home properly, and that the municipality was negligent in the issuance of the certificate of occupancy.

Municipal power to issue the certificate is created by N.J.S.A. 40:48-1(13) which gives a municipality power to "regulate and control the construction, erection, alteration and repair of buildings and structures of every kind within the municipality." The court reiterated the American rule that judicial, legislative, and administrative officers are not generally liable for injurious consequences of discretionary action or non-action. The court then noted that while the issuance of a certificate of occupancy does not involve planning or policy functions, it does entail the exercise of discretion. Not only must the building inspector determine

By Gene Markin, Esq.

whether there has been compliance with building regulations and health regulations, but whether the structure complies with the requirements of zoning ordinances. The court concluded that it seemed improper to expose a municipality to the possibility of tort liability for errors in the exercise of judgment of its building inspectors, especially since the municipality is responsible for the acts of all of its agents.

Addressing the public policy concerns, the court noted that the certificate of occupancy is merely a testimonial that the property is being used in compliance with applicable ordinances. It is issued for the protection of the municipality as a whole, not for the benefit of the landowner. In what might appear a perversion of logic, the court stated that while the building inspector must use due care in the performance of his functions, his obligation is to see to it that there has been no violation of municipal ordinances, not to insure that the building has been constructed in such manner as to protect the landowner. If, incidentally, the landowner benefits from the activities of the building inspector, this does not give him the right to rely upon the certificate of occupancy for proof of proper construction. For this, the landowner can protect himself by contract.

In adding the proverbial last nail on the coffin, the court cited approvingly to other jurisdictions that have considered the issue and concluded that municipalities are not liable for the negligence of building inspectors in the performance of their duties. Accordingly, the court concluded that in the analogous situation of liability of a municipality for issu-



ance of a building permit, the municipality is not liable for negligence.

Accordingly, the law in New Jersey is such that a public entity is not liable for an injury, such as property damage, caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or public employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked.

For property owners, this means that recovery for damages caused by negligent construction has to come from those responsible for the actual construction, not from the public entity or officials that approved or inspected the construction.

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Survival Guide

Continued from preceding page

Windows 8 platform is based on applications or 'apps,' it looks and works very differently from the more familiar Windows XP and

computer graphics. Today she writes applications for the iPhone and iPad to show "how useful and fun mobile devices and tablets can