

# Leaky Foundation? Slowpoke Condo Association? Room for Relief in Court

*Michael E. Chapnick, Daily Business Review*

August 10, 2015



An injunction against a Clearwater condominium association was approved by the Second District Court of Appeal at the behest of unit owners who filed suit to demand immediate repairs to the concrete slab beneath their first-floor residence.

The opinion highlights the substantial obligations that condominium associations have to maintain, repair and replace their common elements, and it reflects the severity of how the Florida courts may rule against the associations that fail to adequately do so.

The appellate ruling filed on July 15 in the case of John and Annmarie Amelio v. Marilyn Pines Unit II Condominium Association reversed the trial court's decision to deny a mandatory injunction against the association. The Amelios filed suit for a mandatory injunction and damages against the association due to its failure to adequately address and resolve the problems caused by moisture seeping through the slab on which their unit sits.

The couple first noticed the excessive moisture in their residence in 2010 when it began to cause water damage to the unit and its contents. The association responded by bringing in a leak detection service, which determined that there was excessive moisture in the slab not caused by a leak.

The association retained an engineering firm in March 2011 to inspect the slab, and the firm recommended the installation of a moisture barrier over the slab and an exterior drainage system. It then took the association until December 2011 to hire a different engineering firm for the design and installation of the drainage system, which was not completed until more than a year later in early 2013. However, high levels of water intrusion and moisture continued to plague the unit.

The association retained the original engineering firm, which again recommended a moisture barrier, and it contracted with another company for the addition of the moisture barrier. Unfortunately, the barrier was not installed in accordance with the engineering firm's specifications, and the concrete slab may have been too soft and powdery for it to be effective. The Amelios' residence continued to be damaged by moisture intrusion, and it eventually became uninhabitable as the association refused to take any further action.

## Adequate Remedy?

A nonjury trial was conducted on the Amelios' motion for injunctive relief, and the court denied the injunction because it found that the plaintiffs had failed to demonstrate that they had no adequate remedy at law.

The appellate court engaged in a detailed explanation of the requirements for entitlement to mandatory injunctive relief. In order to establish such entitlement, the court opined that three conditions must be met: there must be a clear legal right which has been violated, irreparable harm must be threatened, and there must be a lack of an adequate remedy at law.

As to the requirement that the movant establish a clear legal right which has been violated, the court found that such right was established by the community's declaration of condominium itself. The declaration prohibited the Amelios from unilaterally making any changes or alterations to the floor slab, and it instead required the association to maintain the slab.

The court found the requirement of irreparable harm satisfied by finding a violation of the Condominium Act and the condominium documents, but it went further and found that the irreparable harm was evidenced by the excessive moisture in the unit, the inability of the association to remedy the situation and the fact that the association had the exclusive duty to make repairs to the slab.

The frequently more difficult element to establish is that of having no adequate remedy at law. Citing *Hiles v. Auto Bahn Fed'n.*, (Fla. 4th DCA 1986), the court stated, "If monetary damages would fully compensate a loss, then this element is not established."

In reversing the denial of the request for injunctive relief, the appellate panel found that because the association had the exclusive right to remedy the problem and because until it did so the unit would continue to be damaged and uninhabitable, monetary damages would be inadequate to fully compensate the Amelios. Therefore, the unit owners had no adequate relief at law.

The association in this case had been advised from the onset of the problems with the slab in 2010 by its own legal counsel that it was responsible for the maintenance and repair of this component of the property. However, it failed to adequately rectify the problem, and now it will be forced to take immediate actions under the terms of the injunction while also facing the prospect of significant monetary damages to the Amelios.

This ruling resoundingly illustrates the significant repercussions that condominium associations can face if they fail to adequately maintain and repair the structural and common elements of the property for which their own governing documents make them solely responsible.

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