

## California Homeowners Can Release Future, Unknown Claims Against Builders

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In *Belasco v. Wells*, 183 Cal. Rptr.3d 840, 234 Cal. App. 4th 409 (2015), the California Court of Appeals for the Second District addressed the question of whether a homeowner, when settling an administrative complaint against a licensed homebuilder, can release future, unknown claims. Despite the presence of a California statute, Cal. Civ. Code § 1542, stating that a general release does not extend to claims that the releasor does not know about, the court held that the homeowner's express release of future claims was enforceable. Thus, the homeowner's release - signed as part of a 2006 settlement of the homeowner's construction defect claims against the defendant, a homebuilder - barred the homeowner's 2012 claims against the builder based on latent defects in the roof of the home that the homeowner discovered in 2011.

### Background

The plaintiff, David Belasco, a patent attorney, bought a newly-constructed home from the defendant-builder, Gary Wells, in 2004. Wells holds a Class B General Building Contractor license issued by the Contractors State License Board (the Board). In 2006, Belasco filed a complaint against Wells with the Board based on alleged construction defects in the home.

As a result of Belasco's complaint to the Board, the parties engaged in arbitration. At the arbitration, both parties were represented by counsel. Wells offered to settle the dispute for the sum of \$25,000 and Belasco accepted Wells' offer.

The parties memorialized their 2006 settlement agreement in a writing signed by both Belasco and his attorney. Under the terms of the agreement, a general release, Belasco released "any and all claims . . . sustained by result of any and all known and unknown construction defects . . . occurring at any time in the past, present and/or future and arising out of or related to or manifesting to the acts or omissions by any of the [released parties]." Belasco affirmed that he "understood and agreed . . . and EXPRESSLY WAIVE[D] all rights under section 1542 of the Civil Code of California, which provides . . . [that] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST . . ."[1]

In 2011, Belasco discovered defects in the roof of his home, defects that he did not know about in 2006. Despite the terms of the release, Belasco filed suit against Wells alleging, among other things, causes of action based on breach of contract and breach of California's statutory warranty - section 896 of the Civil Code - on new construction.

In his answer to Belasco's complaint, Wells alleged, among other things, that Belasco's claims were barred by the 2006 release and waiver. Subsequently, Wells filed a motion for summary judgment relying on these defenses.

The trial court granted Wells' motion, finding that the comprehensive nature of the release, including the section 1542 waiver, unequivocally provided that Belasco expressly waived any and all claims he had or may have in the future. Belasco appealed the trial court's decision.

## Analysis

On appeal, Belasco argued, among other things, that, although section 929[2] of California's Right to Repair Act allows a builder to obtain a "reasonable release" in exchange for a cash payment and no repairs, in order to be a reasonable release, the release can only apply to a specific, obvious violation of the Act. The Court of Appeal disagreed.

Although the court acknowledged that the Act imposes building standards on builders and provides homeowners with a cause of action against builders who fail to meet the standard, the court found that the Act allows builders to resolve complaints by agreeing to a cash settlement. The court also found that section 929 expressly allows builders to negotiate a reasonable release. In addition, the court noted that Belasco was represented by an attorney, he understood the release and the release was explicit. Thus, the court held that "the 2006 cash settlement, with a release and Section 1524 waiver, was a 'reasonable release' under the language of section 929."

In addition to finding that the release was a reasonable release, the court addressed Belasco's argument that "public policy prohibits a general release and 1524 waiver as to subsequently discovered latent defects." The court rejected Belasco's argument, finding that section 929 specifically allows parties to negotiate a reasonable settlement in exchange for a cash payment, Belasco was under no compulsion to enter into the release and waiver in 2006 and the release, on its face, contained express language referencing section 1524.

The Court of Appeal's holding establishes that, despite the prohibition against the release of unknown claims set forth in section 1524 and the protections provided to homeowners by the Right to Repair Act, California homeowners can, in fact, release or waive claims against homebuilders for future, latent construction defects. To release or waive such claims, the language of any settlement agreement should be unequivocal.

Because insurers seeking to pursue subrogation claims stand in the shoes of their insureds and homeowners can, in some circumstances, release future, unknown claims against homebuilders, insurer responding to construction defect claims from insured homeowners should routinely ask their insureds whether they previously filed any claims against the homebuilder. If an insured has, in fact, filed a prior claim against the homebuilder, in order to ensure that the insured has not waived his or her claims against the homebuilder for future, latent defects, the insurer should secure a copy of any release or settlement agreement signed by the parties with respect to the prior claim.

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[1] Section 1542 states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which, if known by him or her must have materially affected his or her settlement with the debtor." Cal. Civ. Code § 1542.

[2] Section 929 of California's Right to Repair Act, entitled "Cash offer in lieu of repair; release," states:

(a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of the action. . . .

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

Cal. Civ. Code § 926.

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