

## **New Jersey Supreme Court to Decide Upon Whether Individual Officers of Construction Firm May Be Held Personally Liable for Technical Violations of New Jersey Consumer Fraud Act**

The New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1 et seq. (“CFA”), was originally enacted by the New Jersey Legislature over 50 years ago to respond to the public harm resulting from “the deception, misrepresentation and unconscionable practices engaged in by professional sellers seeking mass distribution of many types of consumer goods.” The entire thrust of the CFA has historically “pointed to products and services sold to consumers in the popular sense.” Neveroski v. Blair, 141 N.J. Super. 365, 378 (App. Div. 1976). Since its enactment over 50 years ago, the Legislature and the courts have greatly expanded the scope of the CFA to apply in the broad sense to all sorts of circumstances in the construction field.

In addition to fraudulent misrepresentations and omissions of material fact, in the field of residential construction, the CFA and implementing regulations can result in liability for myriad statutory violations that have the practical result of imposing strict liability on companies and their individual owners. Allen v. A&V Brothers, Inc., 414 N.J. Super. 152 (App. Div. 2010).

The Allen case shows that litigating claims of construction defects on residential projects can lead to personal liability against construction company owners, which should give any contractor cause to reflect on whether to even sue on that unpaid contract balance. In that case, the Appellate Division recently reversed the dismissal of CFA claims against principal officers of a construction company, and articulated that all that is needed to impose personal liability on officers is some proof of their knowledge or “personal participation” in the regulatory violation. There, homeowners had brought claims against a landscaping company and its individual owners for property damage that resulted from a wall collapse on their property. The homeowners claimed that the wall was poorly constructed and that inferior backfill was used, in breach of the contract. The homeowners raised statutory violations against the construction company and its owners, including that there was no written contract in violation of N.J.A.C. § 13:45A-16.2(a)(12), and that defendants accepted final payment without permission from the homeowners even though the construction plans had been changed, in violation of N.J.A.C. § 13:45A-16.2(a)(10(ii)). The lower court had dismissed the individual owners from the case and the homeowners obtained a total damage award of \$490,000 once the damages were trebled. On appeal, the Appellate Division ruled that the principals of the company were presumed to be familiar with the applicable regulations and that plaintiffs need not prove intent for the principal officers to be liable. Allen, 414 N.J. Super. at \*12.

On October 21, 2010, the New Jersey Supreme Court granted certification in Allen to consider the question. Additionally, two bills are now pending in the New Jersey Legislature to reverse the pendulum and strictly limit the relief available to litigants in this context. Assembly Bill A1064 has passed in the Assembly and has been referred to the Senate Commerce Committee. Assembly Bill A3333 was introduced on October 7,

2010 and would, if adopted in current form, drastically limit the relief available in the construction context under the CFA.