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

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 facts of all 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 to 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 issuance 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 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.

Gene Markin is an associate in Stark & Stark's Construction Litigation Group where he concentrates his practice in complex construction litigation claims on behalf of community associations, developers and other plaintiffs. www.stark-stark.com

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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