

CLIENT CORRESPONDENCE

TO: Plumwood Terrace Condominium Association
FROM: Jodie McDougal, Association Counsel
RE: Building D Website Update for July 1st

As you recall, on June 11, 2019, on behalf of the Association, I sent a notice of breach and demand to cure letter to both the prime architect, Wells + Associates (Wells) and its structural engineering subconsultant, Sebern Structural Service (Sebern). Since that time, I have engaged in numerous calls with, and sent follow-up correspondence to, the attorney for Wells, two attorneys for the insurer of Sebern (Pearl Insurance), and Rochon Corporation.

As previously noted, the problem at this point is the inaction on the part of Wells and Sebern, but in particular, Wells. Wells has failed to provide a written response to the Association either approving and signing off on the previously proposed Change Order No. 4--which is for Rochon's additional structural steel modification work due to the apparent design defect and is in the amount of approximately \$317,000--or rejecting Change Order No. 4 for stated reasons. Normally, an owner only signs off on a change order, in which additional payment beyond the original contract price is being requested by the general contractor from the owner on a project only after the architect reviews and signs off on such change order, thereby demonstrating that the architect agrees with the appropriateness of the scope of work and price set forth within the change order. To be clear, once an owner signs off on a change order (with or without the architect's approval), the owner is fully obligated to pay the general contractor for that change order amount, which is the reason owners generally do not sign change orders without its architect or engineer first approving it. Here, the Association signing off on the \$317,00 Change Order No. 4 without the architect's approval of such change order involves an unnecessarily high risk that the Association would be liable for and forced to pay, itself, for some or all of the Change Order No. 4 without reimbursement from the liable parties, i.e., Wells and Sebern. Accordingly, I could not recommend that the Association expose itself to that type of liability by signing off on Change Order No. 4 when Wells had not approved it.

Instead, for the past several weeks, I have been engaging in numerous conversations with Wells and Sebern/Pearl Insurance in an attempt to (1) push Wells to more quickly review and formally respond in writing to Change Order No. 4 and otherwise speak to Rochon about any disagreement between Wells and Rochon regarding the content of such change order, and (2) push Sebern's insurer to agree to pay the costs of Change Order No. 4, however, Sebern has told us that it, too, is waiting for Wells' review of and response to Change Order No. 4.

While Wells, Sebern, and their respective insurers have continued to express a desire to move things along and resolve the structural design defect issue that caused the Project to stall, that has not happened, and no concrete actions have been taken by these parties since my June 11, 2019 letter demanding that actions be taken to promptly resolve the design defect issue. In particular, to date, Wells has not provided any written response to the Association regarding Change Order No. 4, and instead, Well's counsel has merely verbally expressed to me that Wells cannot accept Change Order No. 4 because Wells has some question/uncertainty about the proposed extension of the Contract Time requested by Rochon. However, Wells has not clearly articulated to the Association or Rochon the basis for any such uncertainty/questions. Sebern's insurer, Pearl Insurance, continues to suffer from the type of inaction, including claiming that it has questions or needs further information from Rochon, but not providing any list of questions after repeated requests by my office for multiple weeks.

In light of the foregoing, I have made the decision that the Association simply cannot wait any longer, and I have come up with a workable solution to get the Project back on track--a solution for which the Association does not need Wells or Sebern's cooperation. Per my request, Rochon has now submitted a materials-only Change Order No. 5; this change order is only in the amount of \$47,000 and represents what should be undisputed material costs (plus a reasonable contractor fee amount). Accordingly, I am comfortable with the Association signing this materials-only Change Order No. 5 without

Wells' approval, which will allow Rochon to order the necessary materials for the structural steel modification work, which is very good news. The Board has now signed the materials-only Change Order No. 5 and submitted it to Rochon, who will now order the materials. I have been told by Rochon that the steel beams and related materials necessary for the structural steel modification work will be fabricated and shipped, and will arrive on site, in approximately 4 to 5 weeks from today.

The suspension of the Project is now resolved, as the materials are being ordered and work on the site will recommence in approximately 4 to 5 weeks. In the meanwhile, I will continue my communications with Wells, Sebern, and their respective insurers to compel them to agree to cover the costs of Change Order Nos. 5 and 6 stemming from the structural design defect. Attached hereto is my most recent letter to Wells and Sebern in this regard.

Finally, my office has now completed compiling the information submitted by Building D residents in their responses to the RFI. We appreciate the responses. The compiled spreadsheet of information has now been provided to the Board, and some of the information therein may also be made available for review by all owners at the July 16th meeting, assuming such information is kept confidential by all owners.

Thank you.