

## Pierre Grosdidier in Law360: Putting the Brakes on Construction Defect Suits in Texas

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**PRACTICES** Construction Litigation, Litigation

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In *Mosaic Residential N. Condo. Ass'n. Inc. v. 5925 Almeda N. Tower LP*, the Houston First Court of Appeals affirmed a district court's summary judgment dismissal of a suit brought by a residential condominium unit owners' association against the builders and developers of a new high-rise project. The suit followed water damages to 29 of the condominium's 394 units. Assuming it is upheld, this decision is a victory for developers and builders of residential condominiums. The court's key holding, that the condominium's declaration expressly denied the association standing to sue for construction defects, is important because it might, in conjunction with the litigation-curbing measures introduced in 2015 in Texas Property Code §§ 82.119–120, help reduce the number of these lawsuits.

In practical terms, language prohibiting an association from suing for construction defects might force unit owners to personally bear the burden of litigation, even under the alleviating conditions of a contingency fee arrangement. Anecdotal evidence suggests that some of these new construction defect lawsuits involving condominium towers or complexes are filed by associations on behalf of all unit owners even when only a fraction of the unit owners have evidence of any actual damages. From the developers and the builders' perspective, a lawsuit initiated by a limited number of unit owners with specific claims might be easier to resolve amicably by, say, repairing the affected units, than one filed by an association claiming to represent the interests of all the owners and expecting a settlement payment. ...

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