

Berkeley: Roommates who nearly fell off balcony sue

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BERKELEY -- Three young women who stepped off a fifth-floor balcony seconds before it collapsed last year, killing six college students and injuring seven others, have sued the builders, owners and property managers of the Library Gardens apartment complex.

The suit offers new allegations of negligence in the decade before the tragedy.

Joining the 13 victims and families of the June 16, 2015, collapse, Caroline Conlan, Clíodhna Maloney and Aisling Tallon sued the contractors, owners and property managers last month in Alameda County Superior Court, alleging that the wooden balcony had poor workmanship and that warning signs of extensive water damage to the structure were ignored.

Allegations in the claim, if true, reveal the clearest timeline as to when critical mistakes were made in the building and maintenance of Unit 405's deck.

If not for pure luck, the three roommates claim, they could also have been killed or injured.

"These young ladies happened to step off the balcony and into their fourth-floor apartment just before the balcony broke away from the building and fell," the lawsuit alleges. "During the initial chaos of the collapse, the three young ladies looked down in horror at the heap of bodies and rotted balcony lying on the ground 40 feet below."

Conlan, Maloney and Tallon had moved into the apartment only two weeks before the tragedy with their fourth roommate, Aoife Beary, who was celebrating her 21st birthday the night of the collapse. Beary fell, and was seriously injured.

According to the lawsuit, witnessing the carnage resulted in the three physically uninjured roommates suffering from "severe mental and emotional harm when they were endangered by and forced to bear witness to the horrific accident that killed and disabled their closest friends."

"As you can imagine, it has been a nightmare and tragedy for all of those involved," the women's attorney Timothy McMahon said in a statement. "Above all else, my clients (who witnessed these unspeakable events, and feared for their own lives) continue to mourn and pray for the loss of their dear friends and those that suffered the horrific injuries from the collapse."

The roommates' suit alleges that mistakes were made by contractors as early as October 2005, when Segue Construction and its subcontractors began framing and building the balcony. The approved design plans called for plywood installed on top of the wooden joists; however, the contractors "purposefully disregarded" the plan's specifications and installed three layers of the cheaper oriented strand board, a type of compressed particle board. OSB is more susceptible to water damage and infiltration than plywood.

After using the wrong material, the contractors waited months to waterproof the balcony despite industry best practices to do so immediately. At the earliest, the balcony was waterproofed in January 2006, the suit claims.

Between the framing and the waterproofing, the "uncompleted balcony was exposed to harsh and wet conditions, including extensive rainfall," the women allege. From Nov. 1, 2005, to Dec. 31, 2005, while the deck sat unprotected, Berkeley experienced 21 days of rain and more than 13 inches of precipitation, they claim.

The Alameda County District Attorney's Office did not pursue criminal charges in the collapse, but it confirmed that the deck collapsed because of catastrophic dry rot caused by water infiltration partially brought on by a rainy construction period.

Despite the soggy wood, the contractors waterproofed it, creating a "concealed and hidden trap," the roommates' lawsuit alleges. The women claim the contractors didn't make the changes because it would have delayed completion of the building.

Bill Leys, who runs the website DeckExpert.com and is a Central Coast contractor, said a \$100 moisture meter would have alerted crews if the wood was dry enough to waterproof. It would take months for three layers of OSB to dry out properly, he said, adding that the manufacturer of the bituthene waterproofing membrane used on the Berkeley balcony approves useage only with plywood, not the stand board.

"It's not uncommon for these types of large projects to sit and remain open until they are signed off," Leys said, emphasizing the importance of checking for moisture when a crew arrives to do such work. "The industry needs to get earlier inspections (by cities) ... and contractors' incentive is 'don't tell me about this, let's just get it done.' That needs to change."

The Contractors State License Board last week announced that the five contractors who worked on the downtown apartment building could lose their state licenses for failing to follow construction guidelines. The state agency found that "poor workmanship" of the waterproofing led to the water damage, which eventually caused the collapse.

The five companies are Segue Construction of Pleasanton, the main contractor; The Energy Store of California of Sacramento; Etter and Sons Construction of Dana Point; R. Brothers Waterproofing of San Jose; and North State Plastering of Fairfield.

The contractors have either declined to talk about lawsuits or have not responded to requests for comment.

The negligence at Library Gardens continued after its October 2006 completion, the three roommates allege.

When BlackRock purchased the building in June 2007, the women allege that the company failed to perform a proper Property Condition Assessment, a standard procedure in commercial property acquisition. A PCA would have included a comprehensive review of architectural design plans and a thorough physical inspection that would have included the Unit 405 balcony.

As early as seven years before the collapse, tenants complained to property management firm Greystar that mushrooms were growing on the balcony surface, but nothing was done, the suite alleges.

The balcony had obvious signs of distress, the three women claim in the suit, including "areas of fungal bloom and biologic growth developed on the exterior stucco surfaces of the balcony." They also mention the bending deck floor, which dropped when people stood on it. The suit alleges that should have been discovered during inspections conducted with each new tenant.

BlackRock and Greystar did not return emails requesting comment.

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