

# The Miami Herald

August 7, 2010

Circulation: 222,742

CHINESE DRYWALL

## Builder's ex-employee can't join Chinese drywall suit

**A man who once reassured buyers their homes smelled because they were new can't access money awarded to those buyers who now know defective Chinese drywall caused the odor.**

BY NIRVI SHAH

The former employee of a construction company that built homes made with defective Chinese drywall can't claim money awarded to homeowners affected by the product -- even though his own house is affected.

Judge Joseph Farina ruled that although Todd Walker lost his job with South Kendall Construction in February, after the company went bankrupt, he couldn't join the class-action suit because it excluded South Kendall employees.

South Kendall and an affiliated company, Palm Isles Holdings, agreed in June to pay \$4 million to residents of three Homestead neighborhoods, Palm Isle Estates, Arbor Park and Augusta Greens. Keys Gate Realty, which handled sales, will pay \$2.6 million. Homes in those neighborhoods, like hundreds of others all over Florida, were built with drywall made in China that has been found to corrode appliances, ruin wiring and make houses smell.

Although South Kendall filed for bankruptcy, some of the company's insurers will foot their share of the bill.

Walker, who was South Kendall's director of construction, owns a home in Palm Isle Estates.

**``He was one of the top people specifically in charge of construction," said attorney Victor Diaz, who represents homeowners in the class-action suit. Diaz said homeowners specifically remember Walker telling them that the odors they noticed as they walked through their homes before closing were just a ``new home smell."**

**``He was kind of saying `I'm an innocent victim.' That wasn't our view of it," Diaz said, adding that nothing prevents Walker from filing his own lawsuit.**

But Walker's attorney argued he was unaware of any problems related to the drywall when the homes were built.

``Mr. Walker has `clean hands,' " attorney Ervin Gonzalez wrote in court documents. ``Had Mr. Walker known the drywall was defective he would not have authorized the defective drywall's installation in his or any other home built by South Kendall Construction."

Attorneys for South Kendall and Keys Gate agreed and supported Walker's attempt to join the class, which includes 149 homeowners. Each of those homes must now be tested to confirm they have Chinese drywall.

Gonzalez also argued that Walker is a former employee, and past employees weren't explicitly excluded from joining the class.

In his ruling, Farina wrote that the court ``rejects the notion that [South Kendall Construction's] bankruptcy can create a fortuitous series of events ending in Mr. Walker's membership in a class to which he was previously barred."

**Diaz is still pursuing the class-action case against other defendants, including Miami-based Banner Supply, which provided the drywall used in the homes.**

In June, a jury found Banner and other parties, including drywall manufacturer Knauf Plasterboard Tianjin, liable for \$2.5 million in damages and expenses for a Coconut Grove couple whose home was ruined by drywall emissions.