Jurisdiction rulings in Chinese drywall case a step forward

Commentary by Hilariie Bass

Two recent rulings by state and federal judges have established personal jurisdiction over one of the more significant Chinese drywall manufacturers that exported defective drywall into the United States during the height of the building boom between 2005 and 2007. Taishan Gypsum Co.

Not only is this a positive first step toward recovery for the hundreds of millions in damages owed to home-builders and other victims, but also a favorable precedent has been set for other victims nationwide in what has been characterized as one of the largest construction defects cases in U.S. history.

The lawsuit, Lennar v. Kraof Gips KG, which was filed in 2009 against Taishan and others, was the first in the United States on behalf of a home-builder against the manufacturers, distributors, suppliers, and installers of the faulty Chinese-made wallboard, commonly known as Chinese drywall. The lawsuit was filed to recover the millions of dollars in expenses the home-builder incurred proactively investigating the problems associated with Chinese drywall and repairing hundreds of its affected homes in Florida.

This one-of-a-kind court ruling is the first time, of which we are aware, that anyone has overcome one of the major obstacles that have traditionally discouraged victims from pursuing claims against Chinese manufacturers: fear of not being able to establish personal jurisdiction against a Chinese manufacturer in U.S. court.

While these manufacturers target and enjoy the benefits of selling their products in the United States, they typically have little, if any, physical presence in the United States. And they set up complex corporate structures and elaborate distribution chains in an attempt to shield themselves from lawsuits here. This ruling forces Taishan to answer for its actions in a U.S. court.

And others affected by Taishan’s Chinese drywall will undoubtedly cite the orders by Miami-Dade Circuit Court Judge Joseph P. Farina and U.S. District Judge Eldon E. Fallon in seeking to establish personal jurisdiction and liability over Taishan in the United States. Judge Farina’s order found that personal jurisdiction exists over Taishan in Florida, and Judge Fallon’s order found personal jurisdiction to also exist over Taishan in Louisiana and Virginia. Judge Fallon agreed with Judge Farina in finding jurisdiction over Taishan in Florida. In his order, Judge Farina also upheld a default against Taishan for its failure to timely respond to the lawsuit that was served on Taishan in China.

Judge Fallon similarly denied Taishan’s motion to dismiss four federal class-action lawsuits filed by drywall home-owners. Taishan at first refused to respond to these federal lawsuits and later argued they should be dismissed on the grounds that U.S. courts had no jurisdiction over Taishan. Both judges disagreed, as evidence shows that Taishan and its wholly owned subsidiary, Tai’an Taishan Plasterboard Co., had sufficient business dealings and contacts in Florida, Louisiana, and Virginia to satisfy the exercise of jurisdiction in those states.

These rulings are a major win for all victims of Chinese drywall. Just as important, these rulings undoubtedly also represent a major step forward in the long legal battle to hold foreign companies accountable for the litany of defective China-made products, including everything from toxic toys to tainted milk.

While the U.S. Consumer Product Safety Commission and other consumer advocates have not been able to force Taishan and other Chinese drywall manufacturers to come to the table and negotiate, there is hope the judges’ rulings will have an impact.

The orders may put increased pressure on Taishan to do the right thing and pay what is justly owed to U.S. home-builders and other victims who have suffered enormous damages as a result of the Chinese Drywall problem. Kenneth Fredell, a lawyer for another Chinese-manufacturer of defective drywall, already agreed earlier this year to pay hundreds of millions of dollars to resolve related drywall claims.

If Taishan refuses to step up and do the right thing, there are other possible avenues to pursue when judgments are entered against Taishan in the United States, including seizing Taishan’s property on ships and other assets outside China.

While the rulings are a major positive step forward, ultimately what is realigned is stronger, more-defined requirements for foreign companies doing business in or with the United States.

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