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## Vecellio mansion trial wraps up

### Judge to rule on contractual, warranty issues involving disputed repairs at oceanfront house.

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By Darrell Hofheinz

Daily News Real Estate Writer

A raft of attorneys finally rested last week in a complex civil trial involving disputed construction defects at Leo and Kathryn Vecellio's \$42.5 million oceanfront mansion and guesthouse on the North End.

A judge now will rule on contract, fraud and warranty issues, after weeks of testimony about the alleged defects and who was or wasn't legally obligated to fix them.

The case pitted the Vecellios against several defendants, including the home's builder, Dan Swanson, and two of his West Palm Beach-based companies — Addison Construction Corp. and Addison Development Corp. Also named were Dean and Laura DeSantis of Boca Raton, who bankrolled the 25,000-square-foot "spec" property at 589 N. County Road.

The Vecellios filed their lawsuit in December 2009, almost a year after they bought the new home. They are seeking monetary damages related, in part, to more than \$11 million they claim they were forced to spend on repairs to fix serious construction defects, many related to water intrusion and mold growth.

The suit accused Swanson's companies and the DeSantis' ownership company of breaching the house's warranty by failing to correct the problems. The Vecellios further alleged that the defendants knew about defects before the property changed hands in January 2008.

In court, the defendants disputed those allegations, arguing that any problems were either fixed or fixable by the original contractor or weren't defects at all. And in any event, defense attorneys claimed the problems did not justify repairs costing millions of dollars or replacing every window and door — some 130 in all — with more expensive versions.

In his closing argument Wednesday, Vecellio attorney G. Joseph Curley criticized the DeSantis in particular for not making sure alleged problems were corrected.

"They need to be accountable for this," Curley said. "We're here in court because people didn't step up."

The DeSantis' attorneys, meanwhile, argued that the couple had rightly relied on Addison Construction as their contractor to resolve any problems.

The terms of the sale itself, which involved transferring interests between two limited liability companies, also were disputed: The lawsuit alleged that the DeSantisises violated securities exchange laws by failing to disclose construction defects they knew about before the sale. Their lawyers denied the charge.

### **Multiple counts**

The Vecellios said the repairs were so extensive that during a two-year period they had to move from the main residence first into their guesthouse and then into a house they leased across the street. Among the damages they seek are at least \$1.6 million in “loss of use” claims, their attorneys said.

The lawsuit included multiple counts, some of which were considered by a jury during the first part of the trial, which stretched over 42 days between May 21 and Aug. 2. The jury and non-jury portions ran concurrently, with several counts now to be decided by Circuit Court Judge Gregory H. Keyser.

A further week of non-jury testimony ended Aug. 23 and centered on allegations involving breach of contract, fraud, violations of Florida's Deceptive and Unfair Trade Practices Act and other issues.

Last month, the jury upheld a single claim against Swanson for having failed to disclose to the Vecellios that a floor in the master suite had been repaired after suffering water damage in 2005 during Hurricane Wilma. The jury awarded the couple about \$79,000 in damages on that count.

Jurors also agreed that Swanson, in his role as “agent of the sellers,” did not know about any defects that “materially affected the value of the property which were not readily observable” by the home buyers.

The jury also found three of Addison's subcontractors — who sold and installed the home's windows, doors and roofs — did not violate building codes.

Keyser told the attorneys Wednesday that as he weighs the evidence, he will consider to what extent he is bound by the jury's verdicts.

Attorney Jeffrey A. Blaker, representing Swanson, described that jury-verdict issue as “the elephant in the room” during his closing arguments.

“The Vecellios are absolutely bound by the jury verdict,” Blaker told the court. “The jury determined that there were no building-code violations in the roof system or the windows and doors and there were no product defects with the windows and doors.”

But Curley adamantly disagreed, saying that the judge could “accept guidance from the jury” but that he could rule differently if he chooses.

Also at issue was work done on the house by 10 other subcontractors, who avoided trial by settling claims beforehand with the Vecellios. The terms were not disclosed. The settlements complicated the non-jury portion, because they removed from evidence a number of the alleged defects originally claimed by the Vecellios.

### **Water intrusion**

Attorneys for the Vecellios argued that the defendants were contractually obligated to fix problems noted in a pre-sale inspection — including mold found in an indoor air-quality test — as a condition of the sale. The defendants also were obligated under a warranty to correct other alleged construction defects the Vecellios began identifying several months after the sale, the plaintiffs' attorneys argued.

During the trial, the Vecellios' attorneys strenuously argued that the home had not been adequately waterproofed to prevent water intrusion, seepage and condensation — conditions they said led to the mold found during the initial environmental study and subsequent tests.

In testimony two weeks ago, Leo Vecellio said he was determined to discover the extent and sources of the mold, especially in the oceanfront master-bedroom suite.

“I was concerned for my wife's health,” Vecellio said.

Swanson and his attorneys told the court his crews had fixed some problems and tried for several months after the sale to satisfy the Vecellios' concerns. But Swanson stopped work in April 2009 after the homeowners declared him in default.

The Vecellios, in turn, paid for their own air-quality study and hired an engineer and a different contractor to handle extensive projects, including replacing flooring, flat roofs, air-conditioning, plumbing and a cast-stone motor court.

“Once the defects were found, I didn't have any choice but to fix every last one of them,” Leo Vecellio testified.

But defense attorneys repeatedly questioned whether the Vecellios' projects were legitimate repairs or were simply “betterments” that the homeowners wanted for cosmetic or other reasons.

Swanson and his attorneys maintained that the home had been built with a variety of elements that would prevent water from getting inside, although they acknowledged that a window in the master suite leaked.

The defense also argued that the Vecellios did not properly maintain the home's doors and windows or ensure they were closed tightly enough to create waterproof seals. The plaintiffs denied those claims.

"There was water inside the house for six months," Swanson testified. "If the water was getting inside, no waterproofing is going to stop that."

Swanson also said water likely got into the house when the Vecellios' crews broke into the floor of a terrace off the master bedroom while searching for possible construction problems.

### Post-trial hearing

The Vecellios' legal team has filed a motion asking for a new jury trial, which will be considered among other issues during a hearing scheduled for Wednesday.

Sources close to the case said it could be several weeks before Keyser issues his final rulings and awards damages, if any.

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