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Lawsuit sparks etching debate - Making News

A lawsuit pitting a pool-service company against a pool-building company has inadvertently heated nationwide debate over the cause of plaster discoloration and etching.

John Wallace, owner of the Tracy, Calif.-based service company Aqua Chlor, sued the company's former owner, Richard Townsend, owner of Aqua Pool & Spas. Townsend is a pool builder also based in Tracy. Among Wallace's allegations against Townsend is a breach of the 1993 sales contract, which he contended took place when Townsend stopped referring new pool customers to Aqua Chlor.

This was precipitated by customers of both Wallace and Townsend complaining of plaster etching in their relatively new pools. In the wake of the complaints, the service company and pool builder differed over who was at fault for the problems. Townsend allegedly stopped referring service jobs to him--a breach of the contract that had been drawn up when Wallace bought Aqua Chlor from Townsend.

Wallace also sued for trademark infringement, libel and slander, and the overall lost growth of the company.

Though the jury ruled on behalf of Wallace on all the allegations, it only awarded him \$21,852.58 for lost repair work. Wallace had been seeking more than \$12.5 million. Consequently, Townsend believes that makes him the winner of the suit

"Mr. Wallace demanded damages of over \$12.5 million," Townsend said. "The judgment, in light of the millions he sought, makes us the clear victor in this litigation."

Normally such a lawsuit would be a relatively minor blip on the industry's radar screen, but the case has sparked a heated exchange among industry experts regarding the causes of pool etching and discoloration.

Etching has been a contentious issue for the plaster and service industries, pitting service technicians against builders and plasterers. The debate centers on whether bad water chemistry causes the problem, or if it results from troweling methods used in the pool's construction.

"[In the pools in question], there were some plaster issues that are everywhere in the nation," said Jerry Wallace, general manager of Aqua Chlor and John Wallace's son. "Part of our lawsuit included slander because we felt either Townsend or his employees were blaming plaster problems on us. We felt that was unjustified."

In the wake of the case, experts called on behalf of Wallace and Townsend began a "publication war" with their analyses of the etching that occurred in the pools with which the two companies were involved. The publicity of the case has led to a misperception that the jury made a decision on the cause of spot etching.

Wallace and Townsend said much evidence on spot etching was presented by both sides, but neither the jury nor the judge made any specific decision regarding who was at fault for the discoloration of their clients' pools.

Instead, the jury's ruling and monetary award were part of a general verdict. In follow-up interviews with the jurors, Townsend said that neither side was convincing on the spot etching issue.

"It appeared that much of the technical aspects of the testimony went over the jurors' heads," he said.

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