

HOME BUILDERS NEW CASE ALERT

July 17, 2013

Florida Supreme Court Rules that a Home Builder's Implied Warranties Apply to Subdivision Improvements that Provide "Essential Services" to Homeowners

Maronda Homes, Inc. v. Lakeview Reserve Homeowners Assn., Inc., 2013 WL 3466814 (Fla. July 11, 2013)

The Lakeview Reserve Homeowners' Association sued Maronda Homes for breach of implied warranty, alleging that defects in the design of the roadways and drainage system caused flooding, erosion and other problems in the community. The trial court granted summary judgment in favor of the builder, finding that there was no implied warranty for offsite infrastructure improvements. The Fifth District Court of Appeal reversed, and the builder appealed to the Florida Supreme Court citing an inter-district conflict between the 5th DCA's opinion and an earlier decision of the Fourth District Court of Appeal.

In an opinion filed on July 11, 2013, the Florida Supreme Court affirmed the 5th DCA's decision that the implied warranties of fitness and merchantability apply not only to individual homes in a subdivision, but also to common area infrastructure improvements that provide "essential services for the habitability of the homes," citing roads, drainage systems and retention ponds as examples. The Court differentiated between improvements that are necessary to support the use of a home and those that are merely for convenience or aesthetics.

The Court also rejected the builder's argument that Florida's new implied warranty statute, section 553.835, barred the Association's claim. The statute was enacted in direct response to the 5th DCA's decision, and specifically excludes "offsite improvements" from the scope of a home builder's implied warranties. The statute took effect on July 1, 2012, but provides that it would apply retroactively to claims filed before that date.

The Florida Supreme Court found that the statute affects substantive rights and cannot be applied retroactively. The Court found that the Association had a vested right in its cause of action for breach of implied warranty, and that the Florida Legislature could not abolish this right retroactively without offending due process. From now on, the statute will only apply to causes of action that accrued after July 1, 2012.

Additionally, the Court in dicta expressed their view that section 553.835 abolished a common law cause of action and in doing so violated the separation of powers. However, the Court did not offer any opinion as to how the statute would apply to actions accruing after July 1, 2012. It merely left the door open for consideration of the statute's constitutionality in a future case.

The full text of the opinion is available on the Florida Supreme Court's website. Please click [here](#) for a link. The decision is not final until the time expires to file a motion for rehearing and, if such a motion is filed, until it is determined.

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