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Pennsylvania Court Holds Implied Warranty of Habitability Does Not Extend to Subsequent Purchasers

The Supreme Court of Pennsylvania recently held that the implied warranty of habitability does not extend to the subsequent purchaser of a previously occupied home. See *Conway v. Cutler Group, Inc.*, 2014 Pa. LEXIS 2084, No. 80 MAP 2013 (August 18, 2014). The court concluded that the decision of whether to extend the implied warranty of habitability, and under what circumstances such an extension would be warranted, was a matter of public policy properly left to the General Assembly.

In *Conway*, the Cutler Group constructed a home in Bucks County, which it sold to Davey and Holly Fields in September 2003. In 2006, the Fields sold the home to Michael and Deborah Conway. Two years later, the Conways discovered water infiltration around some of the windows in the home. An engineering and architectural firm concluded that the infiltration was the result of various construction defects. The Conways filed suit against the Cutler Group, alleging that its manner of construction breached the implied warranty of habitability. The trial court dismissed the Conways' complaint, based on the lack of privity between the parties.

Relying on its previous holding in *Spivack v. Berks Ridge Corp.*, 586 A.2d 402 (Pa. Super. 1990), the Superior Court reversed. The Superior Court concluded that the implied warranty of habitability existed independently of an express contract between the builder and the purchaser.

The Supreme Court granted the Cutler Group's petition for allowance of appeal to answer the following question:

Did the Superior Court wrongly decide an important question of first impression in Pennsylvania when it held that any subsequent purchaser of a used residence may recover contract damages for breach of the builder's implied warranty of habitability to new home purchasers?

In considering the issue, the court first noted that it had previously adopted the implied warranty of habitability in the context of new home sales in *Elderkin v. Gaster*, 288 A.2d 771 (Pa. 1972). However, the court's holding in *Elderkin* was rooted in the existence of a contract – an agreement of sale between the builder-vendor and the purchaser-resident.

The court went on to note that the Superior Court's reliance on *Spivack* was misplaced because *Spivack* was readily distinguishable on its facts, and also promulgated a much narrower holding. In *Spivack*, the plaintiffs had purchased a yet-to-be constructed condominium from a developer, which was a separate entity from the builder of the condominium. Although the court extended the implied warranty of habitability to the second purchaser, its holding was limited to circumstances where the first purchaser had never occupied the home.

Since the specific issue had not been addressed within the commonwealth of Pennsylvania, the court examined the decisions from other jurisdictions. The court noted that the Supreme Court of Iowa extended the implied warranty of workmanlike performance to subsequent purchasers in *Speight v. Walters Development Co., Ltd.*, 744 N.W. 2d 108 (Iowa 2008). In a similar manner, the Rhode Island Supreme Court held that contractual privity was not required for a subsequent



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purchaser to maintain an action for breach of the implied warranties of habitability and workmanlike quality with respect to latent defects. *Nichols v. R.R. Beaufort & Associates, Inc.*, 727 A.2d 174 (R.I. 1999).

In contrast, the Vermont Supreme Court declined to eliminate the requirement of contractual privity in a claim for breach of the implied warranty of habitability. *Long Trail House Condominium Association v. Engleberth Construction, Inc.*, 59 A.3d 752 (Vt. 2012). The Connecticut Supreme Court reached the same conclusion in *Coburn v. Lenox Homes, Inc.*, 378 A.2d 599 (Conn. 1977).

Ultimately, the Supreme Court of Pennsylvania concluded that “the question of whether and/or under what circumstances to extend an implied warranty of habitability to subsequent purchasers of a newly constructed residence was a matter of public policy properly left to the General Assembly.” The court found that the arguments put forth by the parties and the *amici* were predominately grounded in policy considerations that necessitated judgments reserved to the legislature after fact-finding and weighing of the ramifications of any decision.

Justice Baer issued a concurring opinion “to point out that the General Assembly ha[d] already acted to protect subsequent purchasers from defects in residential structures that affect the habitability of the home by enacting the Real Estate Seller Disclosure Law (RESDL).” The RESDL requires the seller, as opposed to the builder, to disclose to the buyer any material defects with the property.

Based on the various conclusions reached by the states’ highest courts, it is important for the subrogation professional to examine the applicable case law before filing a claim for breach of the implied warranty of habitability when the insured is a subsequent purchaser.

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