Florida Court Expands Homeowner Association Implied Warranties: HB1013 and SB 1196 Help Florida Developers By Holding Implied Warranties Status Quo

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Florida developers and Florida real estate investors are monitoring not only what happens on appeal in the case of Lakeview Reserve HOA vs. Maronda Homes but also what the Florida Legislature is doing with HB 1013 and its Senate version, SB 1196. Florida community interest groups are also watching closely, sitting on the other side of the fight from Florida developers.

All this activity in both the Florida courts and the Florida statehouse has to do with one big issue -- who will bear financial responsibility for defects in certain community improvements -- sidewalks, driveways, drainage ditches, utilities, roadways, and other parts of a neighborhood that are important to its livability but are not tied to one specific tract or home.

In *Lakeview Reserve HOA*, Florida's Fifth Circuit Court of Appeals reviewed and disagreed with the trial court's decision that a homeowners' association was not responsible for certain defects in community improvements.

The court found an implied warranty under Florida common law existed. In doing so, the appellate court built new Florida common law regarding implied warranties.

In sum, the appellate court concurred that a homeowners' association can pursue a legal claim for breach of common law implied warranties of fitness and merchantability (i.e., habitability) against a real estate developer for certain defects in community improvements (in the case, it was a residential subdivision with defective roads, drainage, retention ponds and underground pipes).

From the opinion:

...we also reject the Developer's argument that extending the implied warranties is a matter for the legislature. In the absence of a legislative pronouncement, we are free to apply common law, and this is a case of application of common law warranties. In fact, Gable I applied common law warranties in a condominium case before the legislature first enacted warranties for condominiums in section 718.203, Florida Statutes (1976). For similar reasons, we reject the Association's application of cases extending implied warranties to the common areas in condominiums as we find those cases inapplicable precisely because those cases are decided on statutory grounds, not available here.

Now, while the Florida Supreme Court is being asked to review the Fifth Circuit's decision regarding implied warranties, the legislative branch is taking the matter into its own hands with the pending legislation. HB 1013 and SB 1196, if passed, will specify that real estate developers are not legally responsible (warranting) these kinds of construction defects.

From the perspective of Florida land developers, the Florida legislature is taking needed action in this extremely bad economy to protect real estate investment and development in the State of Florida. Freedom from expansion of current law regarding defects in sidewalks, etc., can be more than a minor issue - it can sometimes become so serious as to risk the bankrupting of a developer in this economic environment.

Which is why the Florida Legislature is taking action to protect future real estate development in this state. Florida developers need to know that warranty law is firm, not fluctuating, in this economy.

These proposed new laws by definition do not remove longstanding implied warranties; despite some critics, the Florida legislation isn't giving developers a free ride from any responsibility for community improvements.

What these proposed new laws do is simply stop the judiciary from expanding that implied warranty under the common law. From the bill text of HB 1013:

WHEREAS, the Florida Legislature finds, as a matter of public policy, that the Maronda case goes beyond the fundamental protections that are necessary for a purchaser of a new home and that form the basis for imposing an implied warranty of fitness and merchantability or habitability for a new home, and creates uncertainty in the state's fragile real estate and construction industry, and

WHEREAS, it is the intent of the Legislature to reject the decision by the Fifth District Court of Appeal in the Maronda case insofar as it expands the doctrine of implied warranty and fitness and merchantability or habitability for a new home to include essential services as defined by the court, NOW THEREFORE...