

CONSTRUCTION**HOMEOWNERS CANNOT ASSERT CLAIMS AGAINST SUBCONTRACTORS FOR BREACH OF IMPLIED WARRANTY**

by *Stephen E. Richman and Todd A. Baxter*

Since 1979, Arizona courts have recognized an implied warranty of workmanship and habitability (“Implied Warranty”) regarding new home construction. Although a contractual relationship (“privity”) is generally required to bring a claim for breach of the Implied Warranty, since the doctrine was first recognized, the Arizona Supreme Court has created two exceptions.

The first exception allows a subsequent home purchaser to bring an Implied Warranty claim against a builder-vendor, because latent defects in a home are equally devastating to original and subsequent purchasers, and the builder-vendor, being in the better position to prevent major problems, should bear the costs of poor workmanship. More than two decades later, the Supreme Court created an additional privity exception, allowing Implied Warranty claims against a non-vendor builder. In that instance, the court reasoned that “innocent buyers of defectively constructed homes should not be denied redress on the implied warranty simply because of the form of the business deal chosen by the builder and vendor.”

In *Yanni v. Tucker Plumbing, Inc.*, No. 2 CA-CV2013-0024 (App. Nov. 20, 2013), the Arizona Court of Appeals denied a request by a group of homeowner plaintiffs to create another privity exception and allow homeowners to bring Implied Warranty claims against subcontractors. The plaintiffs asserted that the Implied Warranty arises from the construction of the home, rather than merely from the contract between the purchaser and the vendor, that the construction is performed by the subcontractors rather than the general contractor, and, therefore, that the claim “naturally extends to and is properly asserted against [subcontractors] who actually worked on the home.” Indeed, the plaintiffs asserted that the contractual privity requirement “has been abolished in the new home setting.”

The Court of Appeals disagreed, noting that “[t]here is a distinction between the creation of an implied warranty by virtue of construction of a structure and the contractual relationship required to assert its breach as a cause of action[,]” and that the policy reasons underlying the creation of the two previous exceptions were absent in this case. Finally, the court emphasized that its decision not to allow Implied Warranty claims against subcontractors did not leave the plaintiffs without a remedy, as they could seek relief from the homebuilder for the subcontractors’ defective work.

The decision in *Yanni* leaves important questions unanswered. Whether a homeowner can sue a subcontractor in negligence—which

would require the existence of a duty from the subcontractor to the homeowner—remains an open question. Also, the court did not decide whether there is an Implied Warranty running from subcontractors to the general contractor.

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FOR MORE INFORMATION CONTACT:



Stephen E. Richman is a Member and Practice Department Manager at Dickinson Wright/Mariscal Weeks. He can be reached at 602.285.5017 or srichman@dickinsonwright.com.



Todd A. Baxter is an Associate at Dickinson Wright/Mariscal Weeks. He can be reached at 602.889.5345 or tbaxter@dickinsonwright.com.