

Arizona Court Affirms Homeowners' Association's Right to Sue Over Construction Defects

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In *Gallery Community Association v. K. Hovnanian at Gallery LLC*, No. 1 CA-CV 23-0375, 2024 Ariz. App. Unpub. LEXIS 696 (Ct. App.), the Court of Appeals of Arizona (Court of Appeals) discussed whether a homeowners' association can file an action for breach of the implied warranty of workmanship and habitability arising from construction defects. At issue was whether the implied warranty extended to the areas within the community that the association maintained, including the common areas. The Court of Appeals held that homeowners' associations can sue builder-vendors for breach of the implied warranty arising from construction defects.

In this case, a homeowners' association, responsible for managing and maintaining a community of townhomes, sued the developer/builder for alleged construction defects in the common area and exteriors of homes that the association maintained for the homeowners in the community. The alleged defects included the pool cabana and staircase walls in the common areas and the exterior walls, roofs, and staircases on the separately owned townhomes in the community. The builder filed a motion for summary judgment, arguing that the implied warranty extended to dwelling actions initiated by homeowners – not homeowners' associations – and that the alleged construction defects at issue were not related to a dwelling. The trial court granted the motion. The Court of Appeals vacated the trial court's grant of summary judgment and remanded for further proceedings. In reaching its decision, the Court of Appeals determined that both common law and statutory law authorized the homeowners' association's breach of implied warranty claim.

As explained by the court, Arizona common law implies a warranty of workmanship and habitability in new home construction. The purpose of the warranty is to protect innocent purchasers and hold builders accountable for their work. The warranty extends not only to the original buyer but also subsequent purchasers. Purchaser dwelling actions are governed by A.R.S. § 12-1361 et seq. and homeowners' association dwelling actions are governed by A.R.S. § 33-2001 et seq. After performing certain conditions, a homeowners' association may file a dwelling action involving a construction defect, as defined in A.R.S. § 12-1361, arising from or related to the design, construction, condition or sale of the dwelling. Importantly, A.R.S. § 33-2001(2) broadly defines "dwelling" to include a newly constructed single or multifamily residential property and/or improvements owned by the association or the homeowners jointly. Further, the court acknowledged that A.R.S. §12-1361(4)(c) integrates the implied warranty into the statute by defining "construction defect" as any material deficiency in the design construction, manufacture, repair, alteration, remodeling, or landscaping of a dwelling resulting from violations of generally accepted standards of workmanship.

In reaching its decision the Court of Appeals concluded that the plain language of A.R.S. § 33-2001 and A.R.S. § 33-2002 authorized the homeowners' association to sue the contractor for a breach of the implied warranty of workmanship and habitability pursuant to the homeowners' association dwelling action statute. The statute applies an expansive definition of dwelling, to encompass common areas and other property that the association had to maintain.

Subrogation professionals practicing in Arizona should be mindful of the extensive state construction statutes involved when determining which parties are authorized to file an action for breach of the implied warranty of workmanship and habitability arising from construction defects.

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