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Construction Cites

A periodic bulletin citing and analyzing legal and other developments affecting the construction industry

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THE IMPLIED WARRANTY OF HABITABILITY

Since 1979, when the Illinois Supreme Court decided the case of *Peterson v. Hubschman Construction Company*, the legal concept of an implied warranty of habitability has existed in Illinois. The essence of this judicially created warranty is that the purchaser of a new home has a cause of action against his builder for damages resulting from latent defects in the the home. Furthermore, the Court in the *Peterson* case held that the purchaser has a right to expect to receive a house that is reasonably fit for use as a residence. The Court reasoned that the Purchaser needs this protection because he is making a major investment, in many instances the largest single investment of his life, he is not knowledgeable about construction matters, and he relies on the integrity and skill of the builder who is in business of building houses.

Since the implied warranty of habitability is a court-created warranty, it is separate from any warranty given in a contract between the purchaser and the builder. It may not be possible to have a contract which contains an effective waiver of the implied warranty of habitability.

Since the *Peterson* case, Illinois courts have expanded the implied warranty of habitability to include actions against subcontractors by a purchaser when he has no recourse to the builder/vender and actions against builders and subcontractors by a purchaser of a home from a party who originally bought the home new from a builder. The courts have held that there is no need for a direct contract between the new purchaser and the builder or the subcontractor because the implied warranty of habitability exists independently of the contract for sale.

In a recent case entitled "*VonHoldt v. Barba & Barba Construction*," the Illinois Supreme Court further expanded the implied warranty of habitability to include a

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situation where a contractor makes a significant addition to a previously built home and that home is sold to somebody else. The subsequent purchaser may now seek redress against the contractor even though he was not in any contractual relationship with that contractor.

The court went on to indicate that any cause of action against a builder either by the person with which the contractor contracted or any successor owner of the house must be brought within one of two possible periods of time: (a) the ten-year statute of limitations which is set out in the Illinois Code of Civil Procedure for actions of this nature, or (b) a court-established time period of a "reasonable time from the act or omission causing the defect." The Illinois Supreme Court has not yet decided which of the two limitations applies to this type or case. However, in the Redarowicz case decided in 1982, the court held that "a builder cannot be a lifetime guarantor of construction susceptible to a claim of damages under the implied warranty of habitability beyond the foreseeable future."

The meaning of the VonHoldt case and its predecessors is that both a contractor and a subcontractor may be liable to an original or subsequent buyer of a new house or a house on to which a significant addition has been put for latent defects. Contractors and subcontractors should be aware of the long period of liability they have in connection with their work.

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