

Supreme Court of Ohio to Decide Whether Homebuilders Can Provide Express Written Warranty in Lieu of Implied Warranty of Good Workmanship

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Can an Ohio homebuilder disclaim the implied warranty of good workmanship? This question has yet to be answered by Ohio's highest court. However, that will soon change. On February 2, 2011, the Supreme Court of Ohio accepted for review the case of *Paul Jones, et al. v. Centex Homes*, Case No. 2010-1826. The central issue in this case is whether a homebuilder can expressly disclaim the implied warranty of good workmanship.

In 2004, Paul Jones, Latosha Sanders, Eric Estep and Ginger Estep ("homeowners") entered into sales agreements with Centex Homes for the purchase of previously constructed homes located in Canal Winchester, Ohio. In entering in these agreements, the homeowners agreed to pay the stated purchase price and also explicitly agreed to accept the limited home warranty covering defects in materials and workmanship. The agreements provided that Centex Homes was "entitled to rely upon this waiver as a complete bar and defense against any claim," the homeowners asserted. Shortly after moving in, the homeowners discovered a slight electro-magnetic field emanating from the steel floor joists that were installed in the homes. This magnetization, however, was not covered by the limited home warranty.

The homeowners brought suit alleging that the magnetization constituted a defect in construction because it interfered with certain electronic devices and asserted claims for breach of contract, breach of express and implied warranties, negligence, failure to perform in a workmanlike manner, and fraud. The trial court granted summary judgment

to Centex Homes, concluding that the homeowners had "agreed to waive any claims for property damage other than claims covered under the limited home warranty."

On September 9, 2010, the Court of Appeals for the Tenth Appellate District affirmed the trial court's decision. Specifically, the court of appeals held that Ohio law does not preclude a builder-vendor from offering an express limited home warranty while disclaiming other warranties implied by law, including the implied duty to construct a home in a workmanlike manner. *Jones v. Centex Homes*, 2010-Ohio-4268, ¶ 17. The court of appeals also held that disclaimer of the duty to construct a home in a workmanlike manner was not against public policy, was not unconscionable, and would be enforced because the waiver language was clear, unambiguous and conspicuous. *Id.*, ¶¶ 20-21, 26, 30. Finally, the court of appeals rejected Appellants' contention that the limited warranty failed its essential purpose, finding the doctrine inapplicable to the facts of the case. *Id.*, at ¶ 34.

Whether a builder can effectively disclaim the implied warranty of good workmanship is a significant issue that will have a broad impact on the Ohio construction industry. While the final chapter is yet to be written by the Ohio Supreme Court, the case serves as a reminder of the importance of ensuring that written warranties and warranty limitations are clear, unambiguous and conspicuous.

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