

VONHOLDT V. BARBA & BARBA CONSTRUCTION, INC.

SUPREME COURT OF ILLINOIS, 1997
175 ILL.2D 426, 677 N.E.2D 836, 222 ILL. DEC. 302

<http://www.state.il.us/court/Opinions/SupremeCourt/1997/January/Opinions/HTML/80342.txt>

FACTS In August 1982, defendant, Barba & Barba Construction, Inc., constructed a multilevel addition to a single-family house in Glenview, Illinois. Before the addition, the residence consisted of approximately 2,300 square feet. After the addition, the house consisted of approximately 3,200 square feet. More than eleven years later, on November 5, 1993, plaintiff, John W. VonHoldt, purchased the house.

Shortly after taking occupancy, plaintiff noticed a deflection of the wood flooring at the partition wall separating the master bedroom from an adjoining bathroom. This deflection created a depression in the floor plane. Plaintiff maintained that, due to the thickness of the carpet, the depression was nearly concealed. An investigation revealed that the addition had not been constructed in accordance with the architectural plans approved by the Village of Glenview or the Glenview Building Code. This variance resulted in excessive stress on the floor joists and inadequate support for a portion of the roof and ceiling causing a greater-than-expected floor deflection.

The plaintiff brought the present action against defendant alleging that defendant breached an implied warranty of habitability. The trial judge dismissed plaintiff's complaint for failure to state a cause of action. Plaintiff appealed and the appellate court affirmed.

DECISION Judgment affirmed due to the fact that plaintiff's action was barred by the ten-year statute of repose.

OPINION Miller, J. The implied warranty of habitability is a judicially created doctrine designed to avoid the unjust results of *caveat emptor* and the doctrine of merger. [Citation.] Initially, Illinois courts applied the doctrine to the sale of new homes to protect innocent purchasers who did not possess the ability to determine whether the house they purchased contained latent defects. [Citation.]

*** [T]he owner needs this protection because he is making a major investment, in many instances the largest single investment of his life. [Citation.] Additionally, the owner usually relies on the integrity and skill of the builder, who is in the business of building houses. [Citation.] Finally, the owner has a right to expect to receive a house that is reasonably fit for use as a residence. [Citation.]

Plaintiff claims that the implied warranty of habitability should now be extended to include actions against a builder brought by a subsequent purchaser for latent defects in a later addition to a home. In [citation], this court held that the defendants were not subject to the implied

warranty of habitability for a condominium-conversion project. The court held that the doctrine of implied warranty of habitability did not apply because the refurbishing and renovation of the project had not been significant. [Citation.] In the present case, the builder made a major addition to an existing home. We now hold that, when a builder makes a significant addition to a previously built home, an action for damages resulting from latent defects affecting habitability exists under the doctrine of implied warranty of habitability.

An owner claiming that latent defects exist in a major addition to a structure, should be provided the same protection for the addition as that given to the [original] owners ***. In both cases, the owner of the house usually has little knowledge regarding the construction. The purchaser of both a completed home and an addition places the same trust in the builder that the structure being erected is suitable for living. Further, the ordinary buyer is not in a position to discover hidden defects in a structure even through the exercise of ordinary and reasonable care.

We must next determine whether the plaintiff can bring this action even though he is a subsequent purchaser. In [citation], this court extended the implied warranty of habitability to subsequent purchasers of a new home, finding that there was no need for privity of contract because the warranty of habitability exists independently of the contract for sale. Because the doctrine of implied warranty of habitability has been extended to actions by subsequent purchasers of new homes, we can see no reason why the doctrine should not be extended to actions by subsequent purchasers of a home for latent defects in a significant addition to the home made prior to the time of sale.

For the foregoing reasons, we hold that actions for damages from latent defects in the construction of a significant structural addition to an existing residence can be brought against the builder by subsequent purchasers under the doctrine of implied warranty of habitability. However, because here the action was time-barred *** plaintiff's complaint was properly dismissed.

INTERPRETATION The implied warranty of habitability applies to a subsequent purchase against a builder who makes a significant addition to a previously built home.

CRITICAL THINKING QUESTION Under what conditions should the implied warranty of habitability be applied? Explain.