Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association: Expanding the Scope of Implied Warranties in Construction Defect Cases

By Michael Bittner

In *Maronda Homes*, the Florida Supreme Court expanded the implied warranties of fitness and merchantability in construction litigation to include "offsite improvements" such as roads and water management systems. A statutory amendment while the litigation was pending, however, specifically excluded offsite improvements from the scope of the warranties. The following article summarizes the decision and explains why the law in this area remains uncertain.

In *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association.,*[1] the Florida Supreme Court issued an important ruling that significantly expands the scope of the implied warranties of fitness and merchantability in construction defect cases. Specifically, *Maronda Homes* held that these warranties extend to offsite improvements, such as private roadways, drainage systems, retention ponds, underground pipes, and common areas in a residential community. In reaching its decision, the Florida Supreme Court resolved a split of authority between the Fourth and Fifth District Courts of Appeal, and addressed a 2012 Florida statute dealing with such offsite improvements.

The decision potentially exposes developers and builders to claims based upon implied warranties not only for the homes they build, but also for structures in common areas of a subdivision which provide "essential services" for those residences.

I. Caveat Emptor and Implied Warranties In Construction Defect Cases

Historically, the doctrine of caveat emptor ("let the buyer beware") was the controlling rule of law governing sales of real property.[2] Under this doctrine, the seller of real property was not liable to the buyer for a defective condition that existed at the time of the sale. Caveat emptor placed the risk of defect entirely on the buyer and could produce harsh results for an unknowledgeable buyer.

Florida long ago departed from caveat emptor and recognized implied warranties in connection with the sale of new homes and condominiums. In *Gable v. Silver,*[3] the Florida Supreme Court departed from the doctrine of caveat emptor in a residential real estate transaction and concluded that implied warranties of fitness and merchantability extend to new home purchases. In that case, condominium owners sought to obtain relief from their builder and developer for a defective air conditioning system. The Fourth District Court of Appeal held that "implied warranties of fitness and merchantability extend to the purchase of new condominiums in Florida from builders."[4] The court then certified the question to the Florida Supreme Court, which adopted the Fourth District's holding moving away from the doctrine of caveat emptor.[5] The *Gable* Court noted that the general rule of caveat emptor in new home purchases had been eroding across the county and that many states had adopted the "modern rule."[6]

The courts subsequently clarified the scope and applicability of the doctrine of implied warranty in the context of construction of residential homes. The Florida Supreme Court in *Conklin v. Hurley*[7] clarified that the implied warranty extended only to construction of new homes and improvements "immediately supporting the residence thereon." In *Conklin,* the plaintiffs had purchased vacant waterfront lots from a subdivision developer who had contracted for the construction of a seawall abutting the plaintiffs' property. When the seawall collapsed, the plaintiffs sued the devel-

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oper, alleging breach of the implied warranty of fitness.[8] The Florida Supreme Court held that the implied warranty established in *Gable* did not apply to unimproved realty, reasoning that the *Gable* doctrine is based on the need for consumer protection in the sale of homes and other improvements immediately supporting the residence.[9]

Subsequently, in *Port Sewall Harbor & Tennis Club*, the Fourth District Court of Appeal addressed whether the implied warranty applied to certain roads and drainage areas in a subdivision.[10] The court concluded that the work alleged to be defective did not "pertain to the construction of homes or other improvements immediately supporting the residence."[11] The court further explained that even if implied warranty were a relevant theory of liability, it could not be applied to a mortage lender which had foreclosed a mortgage and finished development because the mortgage lender had nothing to do with the construction complained of and did not become liable for the defects and breaches committed by the original developer.[12]

II. Trial Court and Fifth District Court of Appeal Decisions in *Maronda Homes*

The underlying cause of action in the *Maronda Homes* litigation arose from a lawsuit filed by the Lakeview Reserve Homeowners Association, Inc. ("Lakeview Reserve") against the community's home builder, Maronda Homes, Inc. ("Maronda Homes"), for defects in the construction of a residential community in Orange County, Florida.[13] Maronda Homes and its contractor, T.D. Thomson Construction Company (collectively "Developer"),[14] performed all infrastructure and site work in the community, including construction of the storm water drainage system and private roadways.[15] Management control of the subdivision was ultimately transferred to the homeowners association.[16] The Declaration of Covenants, Conditions, and Restrictions required all residents in the community to join the homeowners association, and provided that the association was responsible for the repairs and replacement of common areas, including retention ponds, roads, surface water management system, and drainage pipes. [17]

After Lakeview Reserve assumed control of the subdivision, numerous complaints about water and drainage problems were reported by the residents. Residents reported that storm water failed to drain properly, resulting in flooded driveways. Residents also reported the collapse of storm drain runoffs, standing water and flooding in lawns, leaking storm water pipes, buckling and splitting of pavement and asphalt in the subdivision, and excessive flooding of retention ponds.[18]

Lakeview Reserve filed an action against Maronda Homes for breach of the implied warranties of fitness and merchantability, alleging that it defectively designed and constructed the community's infrastructure, roadways, retention ponds, underground pipes, and drainage systems.[19] Maronda Homes subsequently moved for summary judgment, arguing that the common law implied warranties of fitness and merchantability did not extend to the construction and design of the infrastructure, private roadways, drainage systems, retention ponds, underground pipes, or any other common areas in a residential community because those structures did not immediately support the residences.[20] The trial court agreed and granted summary judgment in favor of Maronda Homes.[21]

On appeal, the Fifth District reversed the trial court, holding that the common law warranties "have application to improvements to real property that not only support residences in a structural sense, but also apply to improvements which provide 'essential services' for the habitability of homes."[22] The Fifth District reasoned that roads, drainage systems, retention ponds and underground pipes were all essential services to the habitability of the home.[23] The court distinguished non-essential services such as landscaping, sprinkler systems, recreational facilities and security systems.[24] The court specifically rejected the developer's argument that the structures had to be physically attached to the home in order for the implied warranty to apply.[25] The Florida Supreme Court granted review based on conflict with the Fourth District Court of Appeal's decision in *Port Sewall Harbor & Tennis Club*.[26]

III. Florida Legislature Response to Fifth District's *Maronda Homes* Decision

While the Fifth District Court of Appeal's decision was still under review by the Florida Supreme Court, the Florida legislature enacted section 553.835, Florida Statutes (2012), in direct response to the Fifth District's holding in *Maronda Homes.* Section 553.835 was drafted to exclude offsite improvements from any implied warranty of habitability.[27]

Section 553.835(4) expressly provides that there is no cause of action to a purchaser of a home or a homeowners association based upon the doctrine of implied warranty of fitness and merchantability or habitability for "offsite improvements." This statute took effect on July 1, 2012 during the pendency of the *Maronda Homes* litigation. The language of the statute indicates it was intended to have retroactive effect.[28]

IV. The Florida Supreme Court's Decision in *Maronda Homes*

On July 11, 2013, the Florida Supreme Court issued its opinion affirming the Fifth District's decision and holding in part that the implied warranties of fitness and merchantability applied to improvements that provide essential services to the habitability of a residence.[29] The court also held that section 553.835, Florida Statutes, did not apply retroactively and that its retroactive application was an unconstitutional abrogation of the homeowners association's vested substantive rights.

After discussing the history of caveat emptor and the development in Florida of implied warranties arising from the sale of real property, the court applied the policies advanced by the decisions in *Gable* and *Conklin* to conclude that the alleged defects at issue were "part of a fundamental and essential support system" which were "absolutely essential to support the residential use of the

residential units in the community, and therefore, fall within the purview of the type of complex defects for which the implied warranties are intended to provide protection."[30] The court expressly adopted the "essential services test" articulated by the Fifth District Court of Appeal, which holds that the implied warranties apply to structures in common areas of a subdivision that immediately support the residence in the form of essential services.[31]

In addition, the court addressed the issue of whether retroactive application of the statute was constitutionally permissible.[32] Maronda Homes argued that the Legislature's enactment of section 553.835 applied retroactively to divest Lakeview Reserve of its cause of action for breach of implied warranty.[33] The court rejected this argument, stating "[s]ection 553.835 cannot be constitutionally applied retroactively to Lakeview Reserve's cause of action because that action is a vested right."[34] The court held that section 553.835 could not be applied retroactively because that application would abolish Lakeview Reserve's vested right in its common law cause of action for breach of implied warranty.[35]

The court also discussed the possible unconstitutionality of the statute for actions occurring after the effective date of the statute, July 1, 2012. The court suggested that section 553.835 violates the Florida Constitution's "access to courts" provision because it attempts to abolish a common law cause of action.[36] The court appeared to be particularly offended by the Florida Legislature's attempt to abrogate a specific appellate decision while that decision was under review in the Florida Supreme Court, noting "this is a clear violation of separation of powers because the Legislature does not sit as a supervising appellate court over our district courts of appeal."[37]

V. Conclusion

The result of the Florida Supreme Court's ruling in *Maronda Homes* is that the implied warranties of fitness and merchantability now clearly apply to offsite improvements that provide essential services to a home. Home builders and developers may be exposed to additional liability for latent defects in "essential services" improvements if the claim arose prior to July 1, 2012. It is uncertain at this point whether the implied warranties for essential services improvements apply to causes of action arising after July 1, 2012. The legislative intent to prohibit implied warranty claims in those situations is clear, but the constitutionality of the legislature's response remains to be litigated.

1 127 So. 3d 1258 (Fla. 2013).
2 *See Conklin v. Hurley*, 428 So. 2d 654, 656 (Fla. 1983).
3 258 So. 2d 11 (Fla. 4th DCA), *adopted,* 264 So. 2d 418 (Fla. 1972).
4 *Id.* at 18.
5 *Gable v. Silver,* 264 So. 2d 418 (Fla. 1972).
6 *Gable*, 258 So. 2d at 14.
7 428 So. 2d 654, 655 (Fla. 1983).
8 *Id.* at 657.
9 *Id.* at 658.
10 *Port Sewall Harbor & Tennis Club Owners Ass'n, Inc. v. First Fed'l Sav. & Loan Ass'n of Martin Cnty.,* 463 So. 2d 530 (Fla. 4th DCA 1985), disapproved of by *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Ass'n*, 127 So. 3d 1258 (Fla. 2013).
11 *Id.* at 531.
12 *Id.* at 532.
13 *Lakeview Reserve Homeowners v. Maronda Homes, Inc.,* 48 So. 3d 902 (Fla. 5th DCA 2010).
14 Lakeview Reserve initially filed suit against Maronda Homes, the developer of the subdivision. Maronda Homes then filed a third-party complaint against T.D. Thomson, which Maronda Homes hired to construct the roadways and drainage systems.
15 *Id.* at 904.
16 *Maronda Homes*, 127 So. 3d at 1261.
17 *Id.*
18 *Id.*
19 *Id.* at 1262.
20 *Id.*
21 *Id.*
22 *Maronda Homes,* 48 So. 3d at 909.
23 *Id.*
24 *Id.* at 908.
25 *Id.* at 909.
26 *Maronda Homes,* 127 So. 3d at 1261.
27 The full text of section 553.835 follows:
(1) The Legislature finds that the courts have reached different conclusions concerning the scope and extent of the common law doctrine or theory of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home, which creates uncertainty in the state's fragile real estate and construction industry.

(2) It is the intent of the Legislature to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home.
(3) As used in this section, the term "offsite improvement" means:
(a) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, excluding such improvements that are shared by and part of the overall structure of two or more separately owned homes that are adjoined or attached whereby such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures; and
(b) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the fitness and merchantability or habitability of the home itself.
(4) There is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements. However, this section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, ss. 718.203 and 719.203.
28 Section 3, Chapter 2102-161, Laws of Florida, states that the law "applies to all cases accruing before, pending on, or filed after" its effective date (available at http://laws.flrules.org/files/Ch_2012-161.pdf).
29 *Maronda Homes*, 127 So. 3d at 1258.
30 *Id.* at 1269.
31 *Id.* at 1270.
32 *Id.* at 1274.
33 *Id.* at 14.
34 *Id.* at 15.
35 *Id.* at 1275.
36 *Id.*
37 *Id.*