SANDBERG PHOENIX

PROFESSIONAL LIABILITY BLOG

In Illinois, Architects Not Required to Guarantee Habitability of Condos

AUTHOR: SANDBERG PHOENIX

Recently, the Illinois Appellate Court had to decide whether a claim for breach of the implied warranty of habitability can be brought against condominium architects purportedly responsible for alleged design defects—in particular, when the developer is insolvent. The court said no. *Board of Managers of Film Exchange Lofts Condominium Association v. Fitzgerald Associates Architects P.C.*, 2016 IL App (1st) 113508-U (Ill. App. 2016) ("*Fitzgerald*").

Traditionally, under Illinois law a cause of action for breach of the implied warranty of habitability was available only against developers and builders. In 1983, however, the Illinois Appellate Court decided to expand the class of defendants that could be subject to such a claim, specifically including subcontractors responsible for latent construction defects when the builder is insolvent.

Relying on that 1983 decision, the plaintiffs in *Fitzgerald* argued the implied warranty of habitability should be extended to cover architects when the builder is insolvent. In support of their position, the plaintiffs argued that refusing to cover architects would frustrate the public policy behind the implied warranty of habitability: to protect homeowners against loss for design and construction defects in their new homes. The plaintiffs further noted there would be an injustice if, on the one hand, homeowners who suffer a loss due to workmanship defects are permitted to recover while, on the other hand, they are not allowed a recovery for losses due to design defects.

In response, the architects argued Illinois courts consistently limit such claims to parties involved in actual construction or construction sales. Because architects do not participate in the actual construction process (they design, but do not build), they argued the implied warranty of habitability should not apply to them.

The appellate court agreed with the architects, finding the implied warranty of habitability applies only to those engaged in the construction process (building, not designing). In reaching its decision, the appellate court noted that expanding the scope of the implied warranty of habitability would unfairly extend architects' responsibilities as defined in their contractual agreements.

Though this decision prevents a plaintiff from pursuing an action against an architect for breach of the implied warranty of habitability, it by no means absolves architects from liability altogether. As the *Fitzgerald* Court mentioned, one may still bring action against an architect under a breach of contract theory if the architect warrants the accuracy of his or her plans and specifications. Additionally, an architect could be liable under a negligence theory if the architect's conduct falls below the standard of skill and care that is expected of architects.

By Jill Van Hoy

Jillian Sharp

Image not found or type unknown