Illinois Supreme Court Disallows Implied Warranty Claims by Owners Against Subcontractors

January 10, 2019

The Illinois Supreme Court has overturned over thirty years of precedent in holding that property owners cannot sue subcontractors for implied warranty of habitability claims.

Courts have long held that owners receive implied warranties that accompany any construction work performed to their property, including an implied warranty of workmanship and an implied warranty of habitability for residential property. In the 1983 case *Minton v. The Richard Group of Chicago* (116 Ill. App. 3d 852), the Illinois Appellate Court held that if a homeowner has no recourse against a builder or general contractor (usually as a result of insolvency), a property owner may claim a breach of the implied warranty of habitability against the subcontractors performing any defective work.

In *Sienna Court Condominium Association v. Champion Aluminum Corporation* (2810 IL 122022), the Illinois Supreme Court was asked to review whether a right to recover against an insurance company or funds in escrow for construction defects is sufficient "recourse" to disallow a claim against the condominiums' subcontractors. The Supreme Court examined a more fundamental threshold question of whether a homeowner can bring a claim against a subcontractor under the implied warrant of habitability per the ruling in *Minton* and its progeny.

The court concluded on December 28, 2018 that the implied warranty of habitability is a creature of contract, an implied term of a construction contract, imposed by law. The court reasoned that a party, without any privity of contract with a subcontractor, would require some form of negligence claim by the subcontractor to maintain an action against a party with whom the owner does not have a direct contract. However, in Illinois, as in most states, one cannot recover for a pure economic or commercial loss through a negligence action (known in Illinois as the *Moorman* Doctrine)—with some exceptions. Since the homeowner versus subcontractor negligence claim for economic loss did not fall within any of those exceptions in the *Sienna Court* case, the court noted that the only claim a homeowner can have against a subcontractor lies in contract, not in tort. In overruling *Minton*, the Illinois Supreme Court held that an implied warranty of habitability in construction is an implied term in the construction contract; and absent a direct contract with the subcontractor, an owner cannot bring a claim under the warranty against a subcontractor.

While the *Sienna Court* decision is a victory for Illinois subcontractors, the court did not address whether its ruling extends to any other implied construction warranties, such as the implied warranty of workmanship. The decision also did not address whether a general contractor would be subject to the implied warranty of habitability if the homeowner was not in contractual privity with the general contractor (for example, the homebuyer contracts with a developer entity that is not performing the construction). Further, the facts of *Sienna Court* did not fall within an exception to Illinois' *Moorman* Doctrine that precludes purely economic recovery for negligence claims. One exception to the doctrine, injury or damage resulting from a sudden or dangerous occurrence, is a possibility in construction defect cases. With those facts as an exception to *Moorman*, the court's reasoning on subcontractor liability in *Sienna Court* could have been swayed.

If you have any questions about the impact of this ruling, please contact your Miller Canfield attorney.