

*The Implied Warranty of Habitability Applies to Builders (Not Just Developers) of a
Condominium Project*

by

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On September 28, 2010, the Illinois Appellate Court issued its opinion in *1324 W. Pratt Condominium Association v. Platt Construction Group, Inc.*

The pertinent facts are: 1324 W. Pratt Condominium Association (the “Association”) is an eight unit condominium building. Its developer, an entity called 6801 N. Wayne, LLC, was dissolved in 2005 and shortly thereafter, the unit owners discovered water leaks around windows, doors, ceilings, and vents in their units and common areas of the building. The water damaged both the physical structure of the building as well as unit owners’ personal property, such as furniture and books. Water also seeped into the walls, causing mold growth throughout the building. The Association retained a property inspector who determined that the leaks were due to a faulty roof and other construction irregularities. In September of 2008, the Chicago Area experienced a series of heavy rainstorms which made the pre-existing leaks worse and which aggravated the mold problem. On December 31, 2008, the Association filed a lawsuit against the defendant builder (Platt Construction Group, Inc.), the developer (6801 N. Wayne, LLC) and the roofing contractor, alleging among other things, breach of the implied warranties of workmanship and habitability. On June 9, 2009, the defendant builder filed a motion to dismiss claiming that the implied warranty of habitability applies only to builder-vendors (sellers) and not simply builders. On September 11, 2009, the trial court granted the builder’s motion to dismiss. The Association appealed.

The Appellate Court reviewed the history of the implied warranty of habitability, stating that the warranty is a “creature of public policy” and was designed “to protect purchasers of new homes upon discovery of latent defects.”

The Appellate Court stated that the implied warranty of habitability is supported by three concepts: First, purchasers of new homes “generally do not have the ability to determine whether the houses they have purchased have latent defects.” Second, “the purchaser needs this protection because, in most cases, the purchaser is making the largest single investment of his or her life and is usually relying upon the honesty and competence of the builder, who unlike the typical purchaser, is in the business of building homes.” Third, “if construction of a new house is defective, its repair costs should be borne by the responsible builder-vendor who created the latent defect.” In applying these concepts, the Appellate Court indicated that the basic principle of the implied warranty of habitability is that builders are accountable for latent defects in the residences they construct.

In overturning the trial court, the Appellate Court quoted the Illinois Supreme Court in stating that the implied warranty of habitability “is applicable against a lessor or builder of a residential unit where latent defects thereabout interfere with the inhabitant’s reasonable expectation that the unit will be suitable for habitation.”

The Appellate Court declined to limit application of the warranty to only builders who are vendors, which it stated would defeat the warranty's goals of holding builders accountable for latent defects in new homes and placing costs of repair on the builders who created the defect. The Appellate Court further stated that the implied warranty is not governed by contract law, stating that, while the warranty "has roots in the execution of the contract for sale," the Supreme Court has been clear that it exists independently of a sales contract and privity of contract is not required. Accordingly, the Appellate Court ruled that the trial court mistakenly granted the motion to dismiss the implied warranty of habitability claim against the defendant builder.

In sum, the *1324 W. Pratt* opinion provides additional precedent for Associations and their counsel to use against builders who build defective buildings and fail to repair or otherwise stand by their work.

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