

SUPREME COURT OF UTAH

Davencourt at Pilgrims Landing Homeowners Ass'n v. Davencourt at Pilgrims Landing, LC

2009 UT 65 (Utah 2009) · No. No. 20070914 · Decided October 2, 2009

SUMMARY

The Utah Supreme Court reviewed dismissal of a homeowners association’s claims arising from alleged construction defects, water intrusion, and soil subsidence in a planned unit development. The court held that the economic loss rule remained applicable to several tort claims, but recognized a limited fiduciary duty owed by a developer while it controlled the homeowners association. The court affirmed in part and reversed in part the district court’s rulings.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Chief Justice Durham; Associate Chief Justice Durrant; Justice Wilkins; Justice Parrish; Justice Nehring
JURISDICTION	Utah
DECIDED	October 2, 2009
DOCKET	No. 20070914
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The homeowners association appealed from partial dismissal of its construction-defect complaint under Utah Rule of Civil Procedure 12(b)(6) and denial of its motion to amend the complaint and reinstate dismissed claims. The district court certified its judgment as final under Rule 54(b).
STANDARD OF REVIEW	A Rule 12(b)(6) dismissal is reviewed for correctness as a question of law, accepting the complaint's material allegations as true and drawing reasonable inferences in the plaintiff's favor. Denial of a motion to amend is reviewed for abuse of discretion, although reliance on an erroneous legal conclusion constitutes an abuse of discretion.
PRECEDENTIAL VALUE	published and precedential Utah Supreme Court opinion
PARTIES	Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC, LeGrand Woolstenhulme,

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the economic-loss rule barred the Association's negligence, negligent misrepresentation, negligence per se, and nuisance claims.
2. Whether the developer and its manager owed the Association an independent limited fiduciary duty that allowed certain tort claims despite the economic-loss rule.
3. Whether Utah recognizes an independent duty to comply with building codes or to construct a home without negligence for purposes of avoiding the economic-loss rule.
4. Whether Utah recognizes an implied warranty of workmanlike manner and habitability in the sale of a new residence, and what limitations govern that warranty.
5. Whether the merger doctrine barred the Association's breach-of-contract and express-warranty claims.
6. Whether the district court abused its discretion by denying the motion to amend and reinstate dismissed claims.

HOLDINGS

1. The economic-loss rule remains valid in Utah and generally bars recovery in tort for purely economic losses arising from construction defects when no bodily injury, damage to other property, or independent duty is present.
2. Construction components integrated into a finished townhome do not constitute 'other property' for purposes of the economic-loss rule.
3. A developer that establishes and controls a homeowners association owes the association and its members a limited fiduciary duty, including duties to use reasonable care in managing and maintaining common property, establish adequate assessments and reserves, maintain financial records, comply with governing documents, and disclose material facts affecting the property and the association's finances.
4. The Association may pursue negligence and negligent-misrepresentation claims against the developer and Woolstenhulme only to the extent those claims arise from the limited fiduciary duty and concern the common areas. Negligence per se and nuisance claims do not arise from that duty and remain barred.
5. Utah does not recognize an independent legal duty to conform to building codes for purposes of avoiding the economic-loss rule, and the Association's negligence-per-se claim was properly dismissed.
6. Utah does not recognize a general independent duty to act without negligence in the construction of a home where the parties lack the legal relationship necessary to impose such a duty.

7. Under Utah law, every contract for the sale of a new residence by a vendor in the business of building or selling residences includes an implied warranty that the residence was constructed in a workmanlike manner and is fit for habitation.
8. To establish breach of the implied warranty of workmanlike manner or habitability, a plaintiff must show purchase of a new residence from a builder-vendor or developer-vendor, a latent defect, manifestation after purchase, causation by improper design, materials, or workmanship, and a defect creating a safety question or rendering the home unfit for human habitation.
9. Contract terms and express warranties concerning the quality of construction are collateral to the conveyance of title and therefore survive delivery and acceptance of the deed.
10. The absence of an act to be performed after delivery of the deed is not conclusive evidence that a contract term is not collateral; when collateral status remains uncertain, all evidence of the parties' intent must be considered, and intent is a question of fact.
11. The district court abused its discretion by denying the motion to amend and reinstate the Association's negligence and negligent-misrepresentation claims against the developer and Woolstenhulme and allegations concerning soil subsidence.

KEY QUOTATIONS

“The economic loss rule is a judicially created doctrine that marks the fundamental boundary between contract law, which protects expectancy interests created through agreement between the parties, and tort law, which protects individuals and their property from physical harm by imposing a duty of reasonable care.” (242)

“Until the developer relinquishes control of the association to the members, the developer owes the following duties to the association and its members:” (246-247)

“Under Utah law, in every contract for the sale of a new residence, a vendor in the business of building or selling such residences makes an implied warranty to the vendee that the residence is constructed in a workmanlike manner and fit for habitation.” (252)

“Therefore, to establish a breach of the implied warranty of workmanlike manner or habitability under Utah law a plaintiff must show (1) the purchase of a new residence from a defendant builder-vendor/developer-vendor; (2) the residence contained a latent defect; (3) the defect manifested itself after purchase; (4) the defect was caused by improper design, material, or workmanship; and (5) the defect created a question of safety or made the house unfit for human habitation.” (253)

“The absence of an act after delivery does not determine conclusively the parties' intent that the act is not collateral.” (254-255)

FACTUAL BACKGROUND

Davencourt at Pilgrims Landing was a planned unit development containing 145 townhome units and common areas. The developer formed and initially controlled the homeowners association, established assessments and reserves, and contracted with the builder to construct and inspect the project. After control passed to unit owners, the Association discovered widespread latent construction defects, water intrusion, resulting deterioration, and

soil subsidence, while the assessments established during the developer's control were allegedly inadequate to fund repairs.

PROCEDURAL HISTORY

The Association sued the developer, the developer's manager, the builder, and fictitious defendants on tort, contract, warranty, fiduciary-duty, and equitable-subrogation theories arising from alleged latent construction defects and soil subsidence. The district court dismissed negligence, negligent misrepresentation, negligence per se, and nuisance claims under the economic-loss rule; dismissed implied-warranty claims; and dismissed contract and express-warranty claims under the merger doctrine. It later denied the Association's motion to amend and reinstate claims, and the Association appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must permit the Association to pursue negligence and negligent-misrepresentation claims against the Developer and Woolstenhulme to the extent they arise from the limited fiduciary duty and concern the common areas; address factual questions concerning when control of the Association was relinquished; permit the implied-warranty claim subject to privity and limitations or repose issues; reconsider the contract and express-warranty claims, including the collateral status of the budget and assessment warranty based on the parties' intent; and allow amendment and soil-subsidence allegations insofar as they relate to the permitted tort claims.

CASES CITED

- American Towers Owners Ass'n v. CCI Mechanical, Inc., 930 P.2d 1182 (Utah 1996)
- Grynberg v. Questar Pipeline Co., 2003 UT 8, 70 P.3d 1
- SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc., 2001 UT 54, 28 P.3d 669
- Yazd v. Woodside Homes Corp., 2006 UT 47, 143 P.3d 283
- Hermansen v. Tasulis, 2002 UT 52, 48 P.3d 235
- Town of Alma v. Azco Constr., Inc., 10 P.3d 1256 (Colo. 2000)
- American Towers Owners Ass'n v. CCI Mechanical, Inc., 930 P.2d 1182, 1191 (Utah 1996)
- Casa Clara Condo. Ass'n v. Charley Toppino & Sons, Inc., 620 So. 2d 1244 (Fla. 1993)
- Loveland v. Orem City Corp., 746 P.2d 763 (Utah 1987)
- Moore v. Smith, 2007 UT App 101, 158 P.3d 562
- Kennedy v. Columbia Lumber & Manufacturing Co., 384 S.E.2d 730 (S.C. 1989)
- Association of Apartment Owners of Newtown Meadows v. Venture 15, Inc., 167 P.3d 225 (Haw. 2007)
- Stubbs v. Hemmert, 567 P.2d 168 (Utah 1977)
- Secor v. Knight, 716 P.2d 790 (Utah 1986)

- Kilpatrick v. Bullough Abatement, Inc., 2008 UT 82, 199 P.3d 957
- Malan v. Lewis, 693 P.2d 661 (Utah 1984)

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