

COMMUNITY LAW NEWSLETTER

PAVESE LAW FIRM

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NEWS ALERT

IN A LANDMARK DECISION, FLORIDA SUPREME COURT DECIDES IN FAVOR OF HOA IN CONSTRUCTION DEFECT CASE

Here is what you need to know about the 42 page opinion issued by the Florida Supreme Court in the case of *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association, Inc.*, S.C. Case No. 10-2292, on July 11, 2013.

The Lakeview Reserve HOA sued the Maronda Homes, developer of the Lakeview Reserve residential subdivision in Orange County due to drainage systems that failed to operate properly causing flooding, erosion, road failures, and other related problems with the common area infrastructure. The trial court granted summary judgment in favor of the developer. The 5th DCA reversed, and the developer appealed to the Florida Supreme Court on conflict with a 4th DCA case.

Florida Supreme Court case upheld the 5th DCA decision and held that the implied warranties of fitness, habitability and merchantability apply not only to the individual home itself, but also to

common area infrastructure improvements that provide "*essential services* for the habitability of the homes" (regardless of whether they are physically attached to the home itself). The Court listed roads, drainage, retention ponds and underground pipes as examples, while distinguishing those services that provide merely convenience or aesthetics (like landscaping, sprinklers, recreation facilities and security systems). The simple test enunciated by the 5th DCA was to determine whether "in the absence of the service, is the home uninhabitable, that is, is it an improvement providing a service essential to the habitability of the home?"

Further, the Court found that the Lakeview Reserve HOA had legal standing to sue on behalf of the individual homeowners and that the owners did not need to do so themselves.

Finally, you may recall last year the Legislature adopted Section 553.835, Florida Statute which provides that there is no cause of action for a home purchaser or HOA for implied warranties of fitness, merchantability or habitability for damages to *offsite improvements*. The developer in this case

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argued that Section 553.835, Florida Statute applies retroactively and divested Lakeview Reserve of its right to sue. The Florida Supreme Court disagreed, finding that such an interpretation would remove a vested right for those causes of action accruing before the effective date of Section 553.835, Florida Statute (July 1, 2012). The Court's opinion also suggested that Section 553.835, Florida Statute may be unconstitutional but did not decide that issue.

The decision is a blow to Developers but leaves open a host questions in any particular case. Finally, please note that this case pertains only to cases brought by an HOA and has no application to cases brought by Florida condominium associations. Section 718.203 of the Florida Condominium Act provides for implied warranties covering the units and the common areas so this case does not change anything in that arena.

This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields (christophershields@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm and heads the Community Law Section for the Firm. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Ms. Schwinn also specializes in Labor/Employment Law. Susan M. McLaughlin (susanmclaughlin@paveselaw.com) is a Partner in the Pavese Law Firm. Keith Hagman (keithhagman@paveselaw.com) is a Partner in the Pavese Law Firm. Brooke N. Martinez (brookemartinez@paveselaw.com) is an Associate with the Pavese Law Firm. Charles B. Capps (charles_capps@paveselaw.com), is an Associate with the Pavese Law Firm. Kathleen Oppenheimer Berkey (kathleenberkey@paveselaw.com) is an Associate with the Pavese Law Firm. Matthew P. Gordon, Esq. (matthewgordon@paveselaw.com) is an Associate with the Pavese Law Firm. Christopher Pope

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