



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**THE LOFTS AT FILLMORE CONDOMINIUM ASSOCIATION v.
RELIANCE COMMERCIAL CONSTRUCTION, INC.,
CV-07-0416-PR**

PARTIES AND COUNSEL:

Petitioner: The Lofts at Fillmore Condominium Association is represented by John F. McGuire, Jr. of Thorsnes Bartolotta McGuire, and by Curtis S. Ekmark and Quentin T. Phillips of Ekmark and Ekmark, L.L.C.

Respondent: Reliance Commercial Construction, Inc. , is represented by Jeffrey D. Holland and John J. Belanger of Breme, Whyte, Brown & O’Meara, LLP, and by Kyle A. Israel of Israel & Gerity, PLLC.

Amicus Curiae: Arizona Consumers Council and Consumer Federation of America are represented by Lisa M. Borowsky.

Regatta Point Condominium Association is represented by Daniel H. Clifford, Bruce Mayfield and Charles R. Fenton of Feinberg Grant Mayfield Kaneda & Litt LLP.

Adobe Villa Condominium Association is represented by Kenneth S. Kasdan, Stephen L. Weber and Michael J. White of Kasdan Simonds Riley & Vaughan LLP.

Alta Mesa Resort Village Homeowners Association, Inc.; Bella Vista Condominium Homeowners Association; Villages of Chandler; the Boardwalk Homeowners Association, Inc.; Cave Creek Villas Homeowners Association, Inc.; Kennedy Park Homeowners Association, Inc.; Mona Lisa Village Homeowners Association; Scottsdale Abrivado Condominium Association; The Salado Grand Residential Association, Inc.; Tre Bellavia Homeowners Association, Inc.; and the Village at Carefree Conference Resort Condominium Association, Inc. are represented by Michael D. Dicks and Darrien O. Shuquem of Dicks Coglinese Lipson & Shuquem PC.

National Association of Home Inspectors Inc., American Society of Home Inspectors, and Consumer Federation of America are represented by James R. Eckley and M. Philip Excolar of Eckley & Associations PC.

FACTS:

Reliance Commercial Construction, Inc. (“Reliance”) contracted with William Mahoney and The Lofts at Fillmore, L.L.C. (collectively “Developers”) to perform work on a residential condominium conversion project the Developers owned and designed. The Lofts at Fillmore Condominium Association (“Lofts”) is an association whose members purchased condominiums in the project from Developers. The members of Lofts did not contract directly with Reliance, and

therefore were not in privity of contract with Reliance.

Lofts filed suit against the Developers and Reliance, alleging a breach of the implied warranty of habitability and workmanlike construction. Lofts alleged that the condominiums have numerous construction defects, including leaking windows, doors, and roofs. Reliance moved for summary judgment, arguing that an implied warranty claim against a builder may be brought only by parties who are in privity with the builder. The trial court granted summary judgment in favor of Reliance. Lofts appealed, arguing that parties not in privity may bring an implied warranty claim under *Richards v. Powercraft Homes, Inc.*, 139 Ariz. 242, 678 P.2d 4277 (1984), which recognized an exception to the privity requirement for homebuyers in certain circumstances. The court of appeals rejected Lofts' argument and affirmed the summary judgment, finding that the exception set out in *Richards v. Powercraft Homes* is limited to suits against "homebuilder-vendors," *i.e.*, contractors who also sell to a purchaser who will live in the home.

ISSUE:

Whether a residential condominium association may bring a cause of action against a builder who causes construction defects.

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