



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**JOHN AND SUSAN SULLIVAN v. PULTE HOME CORP.  
CV-12-0419-PR**

**PARTIES:**

*Petitioners:* John and Susan Sullivan

*Respondent:* Pulte Home Corporation

**FACTS:**

Pulte built the home at issue in this case in 2000, and the Sullivans later purchased the home from the original buyers. More than eight years after Pulte finished constructing the home, the Sullivans sued Pulte because of a defective retaining wall. They brought tort claims for negligence, consumer fraud, and fraudulent concealment, as well as a breach of implied warranty contract claim. (Although the Sullivans had no express contract with Pulte and had no interaction with Pulte until after they found the alleged defects, a breach of implied warranty claim may be brought even in the absence of an express contract between the parties.)

Pulte moved to dismiss, arguing the economic loss doctrine barred the tort claims. *Flagstaff Affordable Housing L.P. Partnership v. Design Alliance, Inc.*, 223 Ariz. 320, 326 ¶28, 223 P.3d 664, 670 (2010) (the doctrine limits a contracting party to contractual remedies for purely economic loss from construction defects). The trial court found the Sullivans had a remedy in contract through their implied warranty claim and sought economic damages. Thus, the economic loss doctrine, as set forth in *Flagstaff Affordable Housing*, precluded the tort claims.

The Sullivans appealed. The court of appeals reversed, holding that the economic loss doctrine does not bar tort claims for purely economic losses when there is no contract between the parties. It reasoned that construction-related contracts are often negotiated between parties on a project-specific basis and have detailed provisions allocating risks of loss and specifying remedies. The Sullivans, however, had no opportunity to negotiate with Pulte about allocating the risk of future losses or protecting themselves in the event that latent defects were discovered. Thus, parties like the Sullivans, who are not in privity with the builder, do not lose their tort claims merely because they may also have an implied warranty claim. (The court noted the *Flagstaff Affordable Housing* case did not address whether an implied warranty contract claim compels applying the doctrine to eliminate tort claims.) Pulte sought review of this ruling.

**ISSUE:**

Does the Economic Loss Doctrine bar plaintiffs' negligence claims to recover

economic damages in the circumstances where a contractual remedy under the implied warranty of workmanship was once available even though they were not in contractual privity with Pulte?

**DEFINITION:**

*Privity:* A relationship recognized by law between two people or entities who have entered into a contract together.

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*