



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ALFRED ALBANO, et al., v. SHEA HOMES LIMITED
PARTNERSHIP, et al.
CV-11-0006-CQ**

PARTIES:

Plaintiffs: Alfred Albano, et al. (“the Homeowners”)

Defendants: Shea Homes Limited Partnership and J.F. Shea Co., Inc. (“Shea”)

FACTS:

This matter involves multiple lawsuits alleging construction defects in homes the Homeowners purchased in the Town of Gilbert. The first case, *Mark Hoffman v. Shea Homes Limited Partnership* (“*Hoffman*”), was a purported class action, but the plaintiffs did not seek class certification until nearly 28 months after the complaint was filed. The superior court denied the motion for class certification based on untimeliness. The court also denied plaintiffs’ motion to amend the complaint as untimely and prejudicial. The three named plaintiffs in *Hoffman* subsequently settled.

The Homeowners’ counsel then sent a Notice and Opportunity to Repair (“NOR”) to the Shea defendants and filed a second action in superior court (“*Albano I*”). The court dismissed the case for failure to comply with the requirements of the Arizona Purchaser Dwelling Act (“PDA”), which requires that the NOR be sent to the defendants 90 days before filing the action. It held some plaintiffs in *Albano I* had not provided NORs or permitted inspection of their homes, and the remaining plaintiffs had not responded to the Shea defendants’ initial offer to repair. Thereafter, the Homeowners sent additional NORs to the Shea defendants and filed a third action in superior court (“*Albano II*”). The Shea defendants removed *Albano II* to federal court based on diversity jurisdiction.

The Homeowners then filed yet another action in superior court (“*Albano III*”). Shea also removed *Albano III* to federal district court. The court granted Shea’s motion for summary judgment in *Albano III*. In *Albano II*, it granted summary judgment as to all plaintiffs except Kegerreis, who was permitted to refile.

Shea next moved for summary judgment on all counts as to Kegerreis. The parties stipulated that at the time the motion for class certification was filed in *Hoffman*, the statute of repose, which prohibits an action from being instituted more than eight years after substantial completion of the home, had passed for all but one home owned by Kegerreis, the last home inspected by the Town of Gilbert. The *Hoffman* plaintiffs filed the motion for class certification on

November 2, 2005, just days before the eight-year statute of repose expired on November 6, 2005. The filing of that motion tolled the statute of repose until February 24, 2006, when the *Hoffman* court denied the motion for class certification. The court previously found that the savings statute, A.R.S. §12-504(A), applied between *Albano I* and *Albano I* such that the Kegerreis' *Albano II* claim would be timely if the *Albano I* claim was timely.

The district court granted summary judgment in favor of the Shea defendants. It found Kegerreis's defective construction claims were barred by A.R.S. §12-552. The court ruled that the statute of repose began running when the Town of Gilbert conducted the final home inspection, not at close of escrow. The statute contemplates that a home need only be "substantially complete," defined as "when any of the following *first occurs*:" (1) the home is first used by the owner or occupant, (2) it is first available for use after having been completed according to the contract or agreement, or (3) final inspection is made, if required, by the governmental body that issued the building permit. A.R.S. §12-552(E) (emphasis added). Accordingly the court found that in this case the home was substantially complete when the final inspection was done by the Town of Gilbert and that Kegerreis's claims were barred by the statute of repose.

The district court held that, as a matter of state law, it would apply the tolling rule of *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974). Under the circumstances of this case, however, the rule did not save the Homeowners' claims. The statute of repose bars Kegerreis from maintaining this action.

The Homeowners appealed the district court's ruling that the statute of repose barred them from maintaining this action. The federal circuit court certified the following questions to the Arizona Supreme Court.

CERTIFIED QUESTIONS:

1. Does the filing of a motion for class certification in an Arizona court toll the statute of limitations for individuals, who are included within the class, to file individual causes of action involving the same defendants and the same subject matter?
2. If so, does this class-action tolling doctrine apply to statutes of repose, and more specifically, to the statute of repose for construction defects set forth in A.R.S. §12-552?
3. If the doctrine applies to statutes of repose, and specifically [to] A.R.S. §12-552, may a court weigh the equities of the case in determining whether, and to what extent, an action is tolled?

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