

SPEIGHT V. WALTERS DEVEL. CO.: THE END OF THE DEFENSE OF PRIVITY OF  
CONTRACT IN CONSTRUCTION CASES

by Arthur Krinsky

I. HISTORIC BACKGROUND

Up until February 1, 2008, there was no case law in Iowa regarding the privity requirement in suits brought by a subsequent homeowner against a contractor for defective construction. The Iowa Supreme Court's decision in Speight v. Walters Devel. Co., 744 N.W.2d 108 (Iowa 2008), has held that subsequent purchasers may now sue homebuilders for breach of implied warranty of workmanship; thus, eliminating the requirement of privity of contract between the homebuilder and a subsequent purchaser.

II. SPEIGHT V. WALTERS DEV. CO., 744 N.W.2d 108 (Iowa 2008):

Facts: The Speights are the present owners of a home in Clive, Iowa, which was custom-built in 1995 by the defendant, Walters Development Company, Ltd. It was built for use by the original buyers, named Roche. The Roches sold the home to people named Rogers, who in turn sold it to the Speights on August 1, 2000. Sometime after purchasing the home, the Speights noticed water damage and mold. A building inspector determined that the damage was the result of a defectively constructed roof and defective rain gutters. Nothing in the record indicates that any of the owners between the original builder and the Speights had actual or imputed knowledge of these defects.

The Speights filed suit against Walters on May 23, 2005, alleging a breach of implied warranty of workmanlike construction and general negligence in construction of the home. Both the Speights and Walters moved for summary judgment, raising the issue of whether the Speights, as remote purchasers, could pursue a claim for breach of an implied warranty of workmanlike construction.

Walters also raised the issue of whether the plaintiffs' claim for breach of implied warranty was barred by Iowa Code section 614.1(4) (2005), the applicable statute of limitations. The district court concluded that, under the present state of the law, the Speights could not maintain an implied-warranty claim, and in any event, such claim would be barred by the statute of limitations. The district court also concluded that the Speights could not bring a general negligence claim because they did not assert an accompanying claim for personal injury—a ruling the plaintiffs did not challenge on appeal.

Holding: 1) Subsequent purchasers can bring action to recover against builder under claim of implied warranty of workmanlike construction; 2) five-year limitations period began to run when subsequent purchasers discovered that water damage and mold was result of defectively constructed roof and defective rain gutters; and 3) five-year limitations period governing claim of breach of implied warranty applicable to sale of goods did not govern purchasers' action. Essentially, a builder's

liability for its work will continue past the first buyer and extend to a subsequent purchaser so long as the claim is filed within the applicable statute of limitations.

Analysis: The implied warranty of workmanlike construction is designed to protect an innocent home buyer by holding the experienced builder accountable for the quality of the construction. This is an exception to the general rule of *caveat emptor* because it is believed that home buyers are generally in an inferior position when purchasing a home from a builder-vendor. The Iowa Supreme Court in 1985 found that the implied warranty of workmanlike construction applied to the sale of a home by the building to the first owner. The Speights sought to extend that doctrine to purchasers beyond the initial purchaser.

Currently, there is a split in jurisdictions on this issue. Some jurisdictions do not permit subsequent purchasers to maintain this cause of action because there is a lack of contractual relationship or privity between the parties. These courts have found that the justification for eliminating the privity requirement in certain products liability cases did not exist in the sale of real estate. For example, a house is not a product of mass marketing scheme or designed as a temporary dwelling that generally changes owners frequently. On the other hand, some jurisdictions permit these claims by subsequent purchasers and find that the lack of privity is not an impediment to these claims. While the cause of action has roots in contracts, it exists independently of the contract. Privity has been disfavored in many jurisdictions in products liability cases. The Iowa Supreme Court held that Iowa should follow this trend because the Court had already eliminated the privity requirement in products liability cases raising a claim for breach of implied warranty. This claim is a judicial creation and does not, in itself, arise from the language of any contract between the builder-vendor and the original purchaser. Further policy justifications supported this position.

The Court reasoned that there is no difference between an original purchaser and subsequent purchasers if a latent defect is discovered later. Walters argued that this rule would lead to increased building costs, but the Court rejected that argument saying that all builders are “currently required to build a home in good and workmanlike manner.” Additionally, the Court rejected the claim that this policy permits unlimited liability for a builder because the statute of repose still remains in effect. The statute of repose begins upon completion of construction of the building.

The Court addressed the applicable statute of limitations to this case. Walters argued that the statute of limitations accrued in 1995 when the house was sold by the defendant to the original purchaser. This was based upon the application of Iowa Code section 554.2725(2), finding that statute of limitations on all actions for breach of implied warranty accrue at the time of delivery, not at the time the damage is discovered. That statute is part of the Iowa UCC, and the Speights asserted that the house is not a “good” to fall within the purview of the UCC provisions. The Court agreed because a good is defined as “all things . . . which are movable at the time of identification to the contract for sale.” Accordingly, the

Supreme Court found that the discovery rule is applicable to this case. No actual or imputed knowledge could be imputed to the Speights because they did not own the home prior to 2000. There was no indication that previous buyers had knowledge of this defect. As a result, the statute of limitations did not bar this cause of action.

### III. POSSIBLE LIMITATION ON THE SPEIGHT DECISION: “BUILDER-VENDOR”?

The Speight decision is largely based on the Iowa Supreme Court’s decision in Krik v. Ridgeway, 373 N.W.2d 491, 492 (Iowa 1985), wherein plaintiffs bought a nearly completed house from the contractor who had built and owned the house. In Kirk, the Supreme Court acknowledged that “in construction contracts, there is an implied warranty that the building to be erected will be built in a reasonably good and workmanlike manner and that it will be reasonably fit for the intended purpose.” Id. at 493. The decision appears to acknowledge that there is an implied warranty between the original owner and the builder for the construction of the house. However, the Court was faced with a question of whether an implied warranty should be afforded to a purchaser of a completed house.

The Court went on to say that “we believe that a purchaser of a new home from a builder-vendor should be protected against latent defects in the home and that our law of real estate should accommodate a rule of implied warranty commensurate with our law of consumer protection in other areas.” The Court concluded that “in the sale of a home, there is an implied warranty that it has been constructed in a reasonably good and workmanlike manner and that it will be reasonably fit for its intended purpose.” As such, to determine whether plaintiffs have a valid claim of implied warranty, the Court looks to the “elements of such a warranty which are generally recognized to be as follows:

- 1) that the house was constructed to be occupied by warrantee as a home;
- 2) that the house was purchased from a builder-vendor, who had constructed it for the purpose of sale;
- 3) that when sold, the house was not reasonably fit for its intended purpose or had not been constructed in a good and workmanlike manner;
- 4) that, at the time of purchase, the buyer was unaware of the defect and had no reasonable means of discovering it; and
- 5) that by reason of the defective condition the buyer suffered damages.”

The Court explained that the “builder-vendor,” for purposes of this rule has been defined as: “a person who is in the business of building or assembling homes designed for dwelling purposes upon land owned by him, and who then sells the houses, either after

they are completed or during the course of their construction, together with the tracks of land upon which they are situated, to members of the buying public.”

The Speight decision extensively cited the Kirk decision and outlined the same five elements that plaintiffs have to prove to recover on a claim of implied warranty of workmanlike construction. The Speight Court kept using the term builder-vendor throughout its decision. The only reference to “a builder” is the definition offered by the Supreme Court, quoting the Kirk decision that defined a “builder” as “a general building contractor who controls and directs the construction of a building, has ultimate responsibility for completion of the whole contract and for putting the structure into permanent form. . .”

#### IV. CONCLUSION

The Iowa Supreme Court agreed with plaintiff and extended the common law of implied warranty to cover subsequent purchasers. As such, the Iowa Supreme Court adapted the view that subsequent purchasers may recover for breach of implied warranty of workmanlike construction against a builder-vender as recognized in Kirk v. Ridgway, 373 N.W.2d 491 (Iowa 1985), for first-party purchasers. Therefore, the Iowa Supreme Court effectively eliminated the requirement of privity for claims by subsequent purchasers against general contractors for the breach of implied warranty of workmanlike construction.

Even though it is unclear from the Speight decision whether a “builder” may be sued based on a claim of breach of implied warranty of workmanlike construction, one may make an argument that the Speight decision is only limited to builder-vendors, and does not include “builders” hired by the owners of land to build a house on it. This argument may be supported by another decision of the Iowa Supreme Court issued on the same day as the Speight decision, Teggatz v. Sattler Homes, Inc, 746 N.W.2d 607, 2008 WL 271823 (Iowa 2008), wherein the Court held that “subsequent purchasers may recover for breach of implied warranty of workmanlike construction against a builder-vendor as recognized in Kirk for third-party purchasers.”