FILED
THOMAS D. HALL
2012 JUN 21 PM 12: 11
CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

MARONDA HOMES, INC. OF FLORIDA,
a Florida corporation, et al.

Petitioners,

vs.

LAKEVIEW RESERVE HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation,
a Florida corporation, et al.

Respondent.

Case Nos. SC10-2292 &
SC10-2336

L.T. Case Nos. 5D09-1146
07-CA-1762

ON REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

SUPPLEMENTAL BRIEF OF PETITIONER MARONDA HOMES, INC. OF FLORIDA

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Association[1] asks this Court to expand the common law warranty of habitability, implied in connection with the sale of a home, to improvements in a subdivision such as roads or drainage structures. Since 1983, however, Florida law has rejected the extension of the implied warranty beyond the home. Recognizing this settled law, the parties focused their original briefs and oral arguments on the public policy case for and against the further expansion of the implied warranty.

The Legislature has now spoken. New Section 553.835(3), Florida Statutes, makes clear that offsite improvements such as roads and drainage are not subject to any implied warranty. The Legislature's resolution of this public policy question resolves this case. First, the Legislature's action confirms our argument that the expansion of the implied warranty is a matter for the Legislature, not the courts. That argument applies with particular force in light of the new statute. Second, the Legislature specifically applied the statute to pending cases, like this case. That intention should be honored because the Association had no vested right in the *expansion* of the common law. To the contrary, it is the Association that seek to upset the settled commercial expectations of the parties based on existing law.

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[1] We adhere to the abbreviations and naming conventions used in our main briefs.

STATEMENT OF THE CASE AND FACTS

Joining a national trend limiting the doctrine of *caveat emptor*, this Court, in 1972, approved the adoption of a common law implied warranty of fitness or habitability in connection with the sale of a home.[2] In 1983, this Court determined that the implied warranty extended to only the home itself and directly supporting structures such as wells or septic tanks, and held that the implied warranty did not extend to a seawall on the property. *Conklin v. Hurley*, 428 So. 2d 654 (Fla. 1983).

Applying *Conklin*, the Fourth District confirmed that the implied warranty of habitability does not apply to the roads and drainage structures in the subdivision. *Port Sewall Harbor & Tennis Club Owners Ass'n v. First Fed. Sav. & Loan Ass'n*, 463 So. 2d 530 (Fla. 4th DCA 1985). The Fifth District disagreed with *Port Sewall* in its decision below, and expanded the implied warranty to roads and drainage structures, calling them "essential services" supporting the home. *Lakeview Reserve Homeowners v. Maronda Homes, Inc.*, 48 So. 3d 902, 903 (Fla. 5th DCA 2010). The Court withheld its mandate and certified conflict, and this Court accepted jurisdiction to resolve that conflict.

After briefing and oral argument, the Florida Legislature passed Ch. 2012-161, Laws of Florida, "An act relating to residential construction warranties," a copy of

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[2] *Gable v. Silver*, 264 So. 2d 418 (Fla. 1972). The courts have variously referred to the implied warranty as the warranty of fitness or merchantability or the warranty of habitability. For ease of reference, we refer to it as the "implied warranty of habitability" or simply the "implied warranty" in this brief.

which is attached as Exhibit A. The statute declares that an implied warranty of habitability does not apply to "offsite improvements" as such term is defined therein. § 553.835(3). The operative language appears in Section 4:

> There is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements. However, this section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, ss. 718.203 and 719.203.

§ 553.835(4).

The act expressly rejects the Fifth District's expansion of the implied warranty of habitability. *See* Ch. 2012-161 at Whereas Clauses. The act also provides that the statute applies retrospectively "to all cases accruing before, pending on, or filed after" July 1, 2012. Ch. 2012-161, § 3.

Based on a joint motion of the parties, this Court granted supplemental briefing to determine the impact of that new statute on this case. This brief, filed on behalf of the Petitioner, Maronda, demonstrates that the new statute applies to this case and that the Fifth District's decision below must be reversed.

ARGUMENT

I. The New Statute Confirms that the Expansion of the Implied Warranty is a Matter for the Legislature, Not the Courts.

In our main briefs, we showed that the Legislature had taken the field in connection with the scope of implied warranties in real estate transactions. Maronda Initial Brief ("Maronda IB") at 19-24; Maronda Reply at 11-14. As we discussed, the Legislature regulates in detail the rights and responsibilities of the parties in connection with the common areas of subdivisions and condominium projects. *See* Chapter 718, Fla. Stat. (regulating condominiums) and Chapter 720, Fla. Stat. (regulating subdivisions and homeowners' associations). Confronting the same policy considerations argued in the briefs, the Legislature specifically had extended the implied warranty of habitability to the common areas in a condominium, Section 718.203, Fla. Stat., but has never extended the implied warranty to common areas of a subdivision, including roads and drainage. In fact, the Legislature rejected one such attempt to extend such implied warranties to subdivision offsite improvements. *See* Maronda IB at 20.

Based on this legislative activity, Maronda argued that it was for the Legislature, not the courts, to balance the public policy issues and determine whether to expand the implied warranty beyond the home.

This argument applies with even greater force now, because new Section 553.835 refutes the Association's primary argument in response. In its original

brief, the Association attempted to defuse the earlier legislative activity by arguing that the Legislature was merely silent or inactive on the issue of implied warranties. Thus, according to the Association, nothing should be read into the Legislature's failure to adopt a statute expanding the implied warranty of habitability beyond the home. Association Answer Brief ("AB") at 31-33.

This argument has now been completely refuted by the Legislature. Chapter 2012-161 specifically addresses this case and expresses the legislative intent that the implied warranty not be expanded to offsite improvements such as streets and drainage. Addressing the public policy issues raised by this case, the Legislature determined that the implied warranty imposed by the Fifth District went "beyond the fundamental protections that are necessary for a purchaser of a new home" and that such expansion of the implied warranty "creates uncertainty in the state's fragile real estate and construction industry." *Id.* at Third Whereas Clause.

Thus, this case is unlike those rare occasions discussed by the Association, where this Court has modified and expanded the common law in the face of legislative inactivity. AB at 33-35. The Association cites no case where this Court has changed the common law in contravention to a specific (and constitutional) legislative directive. AB at 33-34 (admitting that Court has acted in response to "the Legislature's inactivity in this area" or when "there was no legislative impediment to the adoption of the doctrine").

In short, the policy question before the Court is whether the doctrine of implied warranty should be expanded. The Legislature has entered the field and stated that it should not. As this Court has acknowledged on many occasions, this Court should defer to that clear legislative directive. *See* Maronda IB at 21; *State v. DiGuilio*, 491 So. 2d 1129, 1137 (Fla. 1986) ("this Court is not the forum for a debate on wise public policy. The responsible branch of government has already established the public policy . . ."); *Media Gen. Operation, Inc. v. Feeney*, 849 So. 2d 3, 6-7 (Fla. 1st DCA 2003) ("Although we agree with the House that the disclosure of these telephone numbers may result in unreasonable consequences to the persons called, this argument should be made to the Florida Legislature . . . .").[3]

Significantly, this argument has nothing to do with whether the new statute operates retroactively. Although it does, as we explain in the next section, the point we make is a jurisprudential one. The question is whether a court should expand a common law right or defer to the Legislature. We acknowledge that there are rare occasions, for example, a case like *Gable v. Silver*, where long legislative inaction coupled with a national trend may reasonably alert the parties

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[3] *See also Kush v. Lloyd*, 616 So. 2d 415, 419-20 (Fla. 1992) ("Whether public policy supports such a distinction is a matter for the legislature, not this court, to determine."); *Cont'l Cas. Co. v. Ryan Inc.*, 974 So. 2d 368, 394 (Fla. 2007) (if there is an injustice, the argument is "best addressed by the Legislature."); *Parker v. Parker*, 950 So. 2d 388, 394 (Fla. 2007); *Alterra Healthcare Corp. v. Estate of Linton ex rel. Graham*, 953 So. 2d 574, 579-80 (Fla. 1st DCA 2007) (Polston, J. concurring in part, dissenting in part) ("[I]t is the Florida Legislature, rather than the court, who must decide Florida's public policy on this issue.").

to a potential change in the common law. Maronda Reply at 12-14. But here, there is no national trend (Maronda Reply at 3-7) and the Legislature has acted. Thus, no justification exists for the expansion of the common law in the face of a legislative directive to the contrary. *See State v. DiGuilio*, 491 So. 2d at 1137.

The people, through their representatives, have left no doubt on the resolution of the public policy issues here. This Court should defer to the Legislature and refuse to expand the implied warranty in the face of that policy choice. The decision below should be quashed.

II. Section 553.835 Applies to this Case.

Section 553.835(4) specifically eliminates any implied warranty of habitability, declaring that there is no cause of action available to the purchaser of a home "based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements." *Id.* "Offsite improvement" includes any "street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed," § 553.835(3)(a), and any improvements on or under the lot that do not "immediately and directly support the fitness and merchantability or habitability of the home itself." § 553.835(3)(b).

In light of this clear language, there can be no dispute that the statute applies to the roads and drainage structures at issue in this case. The Association

acknowledges that there is no damage to any home. AB at 2 ("the Association concedes that it has not alleged that damage has yet to occur within the walls of the residences on the lots . . ."). There can also be no dispute that the Legislature has the power to enact a statute conferring or limiting particular remedies in connection with particular sales transactions. *Saunders v. Saunders*, 796 So. 2d 1253, 1254 (Fla. 1st DCA 2001) ("The common law is changed where a statute clearly, unequivocally, and specifically prescribes a different rule of law from a common law rule."); *Le Roy v. Reynolds,* 141 Fla. 586, 591-92, 193 So. 843 (1940) (the common law is in force in Florida except where modified by competent governmental authority); *Blocker v. Blocker,* 103 Fla. 285, 293, 137 So. 249 (1931) (same); Section 2.01, Fla. Stat. ("The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state."); *Munn v. People of State of Illinois,* 94 U.S. 113, 134 (1876) ("the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances.").

Thus, the only question is whether Section 553.835, which becomes effective on July 1, 2012, applies to this pending case. Once again the statute is

clear, indicating its intention that the statute apply to all pending cases, regardless when the cause of action may have accrued. The statute applies to "all cases accruing before, pending on, or filed after that date [July 1, 2012]." Chapter 2012-161, Laws of Florida, Section 3.

The Association has indicated that it will challenge the application of the statute to this case as unconstitutional, arguing that the Legislature has interfered with the Association's vested rights. As we demonstrate, however, the Association has no vested right in its hoped-for expansion of the common law. To the contrary, if any party had a settled expectation when this case was filed, it was the Petitioners, Maronda and Thomson. Moreover, the Legislature has not eliminated the Association's right to sue for damages, it has simply chosen not to expand an existing remedy.

The Application of the Statute to this Case

Florida law is settled that the Legislature may apply a new law to pending cases so long as it clearly expresses its intent to do so. *American Optical Corporation v. Spiewak,* 73 So. 3d 120, 130-31. There can be no doubt about that legislative intent here, as noted above. There is a narrow exception, however, to retroactive application. The Legislature may not act to eliminate a vested right. Thus, if a party has a "clearly established" cause of action under Florida law and that cause of action has already accrued, it may be unconstitutional for the

Legislature to "destroy" any vested rights represented by that cause of action. *Spiewak*, 73 So. 3d at 120-21, 124, 131; *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 896 So. 2d 1210, 1218-20 (Fla. 2d DCA 2004).[4]

The Association had no such vested right in this case. At the time any cause of action accrued in this case, Florida law applied the implied warranty of habitability to only the sale of a home and not to offsite common elements such as streets and drainage areas. *Conklin,* 428 So. 2d at 658-59. Even the dissent in *Conklin* conceded that the implied warranty would not apply to common areas such as landscaping, roads, and fences. *Id.* at 661 (Adkins, J. dissenting). Moreover, at the time of accrual, the Fourth District had applied *Conklin* to streets and drainage structures and had confirmed that these offsite common elements were not covered by the implied warranty. *Port Sewall*, 463 So. 2d at 531. The trial court was bound by *Conklin* and by *Port Sewall*, even though *Port Sewall* was

[4] Although not discussed in *Spiewak*, Florida law historically has not been clear to what extent, if any, a common law cause of action becomes "vested" upon accrual. In fact, this Court, joining numerous courts in and out of Florida, has held that there is no "vested right" in a rule of common law. *See, e.g., Clausell v. Hobart Corporation*, 515 So. 2d 1275, 1275-76 (Fla. 1987) (a vested right must be more than the "anticipation of the continuance of an existing law"); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 88 (1978) (there is "no property interest in any rule of the common law"). *See also Weingrad v. Miles*, 29 So. 3d 406, 412-416 (Fla. 3d DCA 2010) (collecting cases); *R.A.M.*, 849 So. 2d at 1215-17 (collecting cases and noting that the retroactive application of a statute is not a "simple or mechanical task"), *quoting*, *Landgraf v. USI Film Prods.*, 511 U.S. 244, 268-69 (1994). *Speiwak* does not discuss, let alone purport to settle this controversy. We need not wade into those deeper waters, however, because it is so clear that the Association had no vested right in this case.

in the Fourth instead of Fifth District. *Pardo v. State*, 596 So. 2d 665, 666-67 (Fla. 1992) (a district court of appeal decision from another district binds the trial court unless overruled).

Thus, at the time this case was filed, the Association had nothing more than the hope that it could convince the Fifth District, and perhaps later this Court, to expand the implied warranty beyond the home to offsite common elements such as streets or drainage structures. Such hope or expectation is far from a vested right. *See Clausell,* 515 So. 2d at 1275-76 (to be vested there must be an "immediate right of present enjoyment or a present fixed right of future enjoyment"); *R.A.M.*, 869 So. 2d at 1218 (to be vested, a right must be more than a mere expectation).

This Court's *Spiewak* decision is an excellent illustration of the point. This Court declined to apply the law at issue retroactively because plaintiffs' cause of action was "clearly established," *Spiewak*, 73 So. 3d at 124, and the new statute would "destroy" this "preexisting right." *Id.* at 131, 133. By contrast, the Association's cause of action was not "clearly established" at any time. Not when the subdivision was built in the early 2000s, not when the homeowners in Lakeview purchased their homes, not when the Association filed its lawsuit, or even now. To the contrary, the Association's cause of action had been *clearly rejected* for 15 years at the time the subdivision was built. *See Port Sewall*, 463

So. 2d at 531. No authority suggests that the Association has a vested right in a long-rejected cause of action.

The Association may try to argue that Florida law has always extended the implied warranty to essential structures immediately supporting the home and that offsite, common elements such as streets and drainage are essential supporting structures. Thus, the Association may take the position that it is not asking for an expansion of the preexisting common law but simply asking this Court to confirm its earlier ruling and apply it to this case.

As a threshold matter, this argument ignores *Port Sewall*, which was binding upon the Association when its case was filed. *Pardo*, 596 So. 2d at 666-67.

Equally important, the Association has made clear that it was asking this Court to *expand* the common law. In its summary of the argument, it asked this Court to "be a leader" and approve the Fifth District's "*expansion* of implied warranties to *further* protect homeowners." AB at 5 (emphasis supplied). Addressing the public policy issues argued in the brief, the Association asked this Court to "reexamine" its previous decisions and "alter the rule of law previously adopted to conform to societal changes and notions of justice and fairness." *Id.*

In the body of its argument, the Association devoted many pages on the public policy reasons for expanding the implied warranty. *Id.* at 22-26, 33-35. The Association's section headings in its main brief tell the story:

- "Public Policy Requires Further Protection for Homeowners." AB at 12.
- "The Developing National Trend Favors Expansion of Implied Warranties." *Id.* at 14.
- "Courts Still Favor an Expansion of Implied Warranties." *Id.* at 16
- "Changes in the Housing Market Since *Conklin* Requires (sic) an Extension of Implied Warranties to Common Areas." *Id.* at 22.

In short, there can be no doubt here that the Association was seeking a change and expansion of the law to circumvent the trial court's correct decision to grant summary judgment. A hoped for change in the law is not a vested right.

Nor did the Fifth District opinion somehow ripen the Association's "hopeful expectancy" into a vested right. Although a final judgment may be a vested right, *State Dept. of Transp. v. Knowles*, 402 So. 2d 1155 (Fla. 1981), the Association is far from a final judgment in this case.

Nor is the Fifth District's decision to expand the implied warranty settled law. The court certified a conflict with *Port Sewall,* and this Court accepted jurisdiction. Thus, the Association still has the task of convincing this Court that the Fifth District's expansion of the common law implied warranty should be affirmed. Thus, at best, the Fifth District created conflict and confusion, not a settled right. That conflict has yet to be settled.

In the meantime, the Fifth District's decision is not final. As a result of the conflict, the Fifth District withheld its mandate by order dated November 30, 2010.

Even if the Fifth District's decision mattered in determining whether there is a vested right (and it does not), there can be no vested right until the case is final. Once again, the Association possesses nothing more than the hope that this Court will agree with the Fifth District and expand the common law implied warranty to the facts of this case. The Legislature has not taken away any vested right even if it interfered with this mere hope or expectation.

If any parties had vested rights here, they were Maronda and Thomson. As discussed above, at the time the subdivision was built and the homes were sold, the common law had rejected any implied warranty of habitability relating to the offsite streets and drainage structures for at least 15 years. The concept of vested rights is a two-way street applying to defenses just as it applies to causes of action. *Spiewak*, 73 So. 3d at 126, 133. The Association has not explained why it would be a violation of its constitutional rights to refuse to expand the common law, but acceptable to take away Maronda's and Thomson's settled expectation that no implied warranty existed when it built the subdivision here.

The New Statute does not "Destroy" a Homeowner's Rights.

The Association argues as if there is no remedy for a homeowner if it loses this case. As our brief and the amicus briefs have made clear, however, there are numerous alternative remedies available to homeowners including negligence, professional negligence, misrepresentation, and rescission, among others. *See*

Maronda Reply at 10; Brief of Amici Florida Home Builders Association and National Association of Home Builders at 8-10. In fact, the Legislature specifically acknowledged these alternative causes of action and left them intact. § 553.835(4), Fla. Stat. The problem for the Association here is that it chose to place all its hopes into a single cause of action, implied warranty, and lost.

Once again, this case is far different from *Spiewak* in which this Court ruled that a statute was unconstitutional because it completely destroyed any right of action by the plaintiffs. 73 So. 3d at 131. Plaintiffs, in *Spiewak*, had seen the Legislature completely eliminate a preexisting right, which left them with no cause of action at all. By contrast, the Legislature in this case left other existing causes of action intact, and did not eliminate any preexisting right.

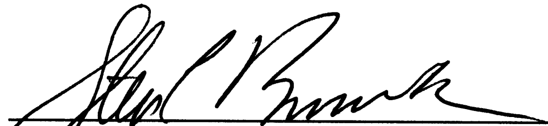
In sum, the Association had no vested right to an implied warranty theory. Its hope that it could someday convince the courts to change the law is not a settled property interest that can be considered a vested right. At best, the law was unsettled and in flux. The Legislature was perfectly within its power to settle this conflict and resolve the public policy issues for all cases, including this case.

CONCLUSION

For all the foregoing reasons, the decision of the Fifth District should be quashed and the case remanded with instructions to affirm the summary judgment granted by the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to Robyn Marie Severs and Patrick D. Howell, Taylor & Carls, P.A., 150 N. Westmonte Drive, Altamonte Springs, Florida 32714, Stephen W. Pickert, Moye, O'Brien, O'Rourke, Pickert & Martin, LLP, 800 South Orlando Avenue, Maitland, Florida 32751, and Neal Hiler, pro se, Neal Hiler Engineering Inc., 2412 Shortleaf Court, Orlando, Florida 32818, this 20th day of June 2012.



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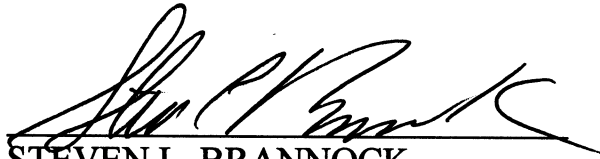
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).



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CHAPTER 2012-161

Committee Substitute for House Bill No. 1013

An act relating to residential construction warranties; creating s. 553.835, F.S.; providing legislative findings; providing legislative intent to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home; providing a definition; prohibiting a cause of action in law or equity based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements; providing that the existing rights of purchasers of homes or homeowners' associations to pursue certain causes of action are not altered or limited; providing for applicability of the act; providing for severability; providing an effective date.

WHEREAS, the Legislature recognizes and agrees with the limitations on the applicability of the doctrine or theory of implied warranty of fitness and merchantability or habitability for a new home as established in the seminal cases of *Gable v. Silver,* 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dism, 264 So.2d 418 (Fla. 1972); *Conklin v. Hurley,* 428 So.2d 654 (Fla. 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v. First Fed. S. & L. Ass'n.,* 463 So.2d 530 (Fla. 4th DCA 1985), and does not wish to expand any prospective rights, responsibilities, or liabilities resulting from these decisions, and

WHEREAS, the recent decision by the Fifth District Court of Appeal rendered in October of 2010, in *Lakeview Reserve Homeowners et. al. v. Maronda Homes, Inc., et. al.,* 48 So.3d 902 (Fla. 5th DCA, 2010), expands the doctrine or theory of implied warranty of fitness and merchantability or habitability for a new home to the construction of roads, drainage systems, retention ponds, and underground pipes, which the court described as essential services, supporting a new home, and

WHEREAS, the Legislature finds, as a matter of public policy, that the *Maronda* case goes beyond the fundamental protections that are necessary for a purchaser of a new home and that form the basis for imposing an implied warranty of fitness and merchantability or habitability for a new home and creates uncertainty in the state's fragile real estate and construction industry, and

WHEREAS, it is the intent of the Legislature to reject the decision by the Fifth District Court of Appeal in the *Maronda* case insofar as it expands the doctrine or theory of implied warranty and fitness and merchantability or habitability for a new home to include essential services as defined by the court, NOW THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Exhibit A

Section 1. Section 553.835, Florida Statutes, is created to read:

553.835 Implied warranties.—

(1) The Legislature finds that the courts have reached different conclusions concerning the scope and extent of the common law doctrine or theory of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home, which creates uncertainty in the state's fragile real estate and construction industry.

(2) It is the intent of the Legislature to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home.

(3) As used in this section, the term "offsite improvement" means:

(a) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, excluding such improvements that are shared by and part of the overall structure of two or more separately owned homes that are adjoined or attached whereby such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures; and

(b) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the fitness and merchantability or habitability of the home itself.

(4) There is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements. However, this section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, ss. 718.203 and 719.203.

Section 2. If any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 3. This act shall take effect July 1, 2012, and applies to all cases accruing before, pending on, or filed after that date.

Approved by the Governor April 27, 2012.

Filed in Office Secretary of State April 27, 2012.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.