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## 1999 Survey of Rhode Island Law: Cases: Contract Law

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**Contract Law.** *Nichols v. R.R. Beaufort & Associates, Inc.*, 727 A.2d 174 (R.I. 1999). Subsequent homebuyers may sue the original builder for breach of the implied warranties of habitability and workmanlike quality that result in latent defects. The old rule, which required contractual privity, is abandoned for its arbitrary exclusion of recovery for innocent subsequent purchasers.

#### FACTS AND TRAVEL

In June of 1985, Thomas and Candace Nichols (Nichols) purchased a home on Kimberly Lane in Cranston, Rhode Island.<sup>1</sup> The house was built in 1983 by defendant, Raymond R. Beaufort and his construction company, R.R. Beaufort & Associates, Inc. (Beaufort).<sup>2</sup> The home was first sold to Beaufort's cousin, Debra Cronin, who sold it to the Nichols about a year and a half later.<sup>3</sup> Just after Cronin and her husband moved into the newly constructed house, large cracks appeared in the cement floor of the garage.<sup>4</sup> To remedy the problem, which Beaufort described as "larger than would be acceptable" for industry standards," Beaufort poured a new cement floor for the garage.<sup>5</sup>

It is unclear whether the Nichols were aware of the previous problem with the garage floor when they bought the house, or if they had the house inspected for defects.<sup>6</sup> However, three years after the Nichols bought the house, the garage floor caved in.<sup>7</sup> Another three years went by without further mishap, but in 1991, large cracks appeared in the walls of the garage, kitchen, and also an addition to the home that the Nichols had constructed.<sup>8</sup>

After noticing the cracks in the walls, the Nichols hired Geisser Engineering Corporation (Geisser) to discover the root of the problem.<sup>9</sup> Geisser advised the Nichols that the house had been built on unstable soil, and that decomposition of organic materials

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1. See *Nichols v. R.R. Beaufort & Assoc., Inc.*, 727 A.2d 174, 175 (R.I. 1999).

2. See *id.*

3. See *id.*

4. See *id.*

5. *Id.*

6. See *id.*

7. See *id.*

8. See *id.*

9. See *id.*

in the soil was causing the walls to crack and the garage to cave in.<sup>10</sup>

Thereafter, in February of 1994, the Nichols filed suit against Beaufort, alleging negligent construction, breach of implied warranties, and negligent violation of building codes.<sup>11</sup> Beaufort moved for summary judgment, arguing that the Nichols were not in privity with Beaufort, which was required for the contract based claims, and that the statute of repose barred any tort claims.<sup>12</sup> The superior court granted Beaufort's motion for summary judgment on the ground that "the absence of contractual privity between the Nichols and Beaufort was fatal to the Nichols' claims."<sup>13</sup> The trial justice did not address whether the statute of repose barred the Nichols' tort claim.<sup>14</sup>

#### ANALYSIS AND HOLDING

On appeal, the Nichols argued that the statute of repose did not bar their tort claims, and that the implied warranties owed to the initial purchaser of a new home should extend to subsequent home buyers in certain circumstances.<sup>15</sup> The Rhode Island Supreme Court dealt with the statute of repose issue first.

Under Rhode Island General Laws section 9-1-29,<sup>16</sup> "[n]o action . . . in tort to recover damages shall be brought . . . against any contractor or subcontractor . . . more than ten (10) years after the substantial completion of such an improvement."<sup>17</sup> Because Beaufort finished constructing the house by September 26, 1983, and the Nichols did not file their claim until February 18, 1994, the statute of repose would bar the Nichols' claim.<sup>18</sup> However, the Nichols argued that the house was not "substantially completed" until Beaufort repaired the cement floor in the garage.<sup>19</sup> This work was done in late 1983, but the Nichols argued it was more likely that the repair work was not substantially completed until

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10. *See id.*

11. *See id.*

12. *See id.* at 175.

13. *Id.* at 176.

14. *See id.*

15. *See id.* at 176-77.

16. R.I. Gen. Laws § 9-1-29 (1956) (1994 Reenactment).

17. *Id.*

18. *See Nichols*, 727 A.2d at 176.

19. *Id.*

some time in 1984, thereby allowing their tort claim to fall within the ten-year period prescribed by the statute of repose.<sup>20</sup>

The supreme court rejected the Nichols' argument, stating that even if the Nichols' estimate of when the work was substantially completed by Beaufort was accurate, "a litigant cannot avoid summary judgment by merely posing factual possibilities without submitting admissible evidence thereof."<sup>21</sup>

The supreme court then addressed whether the Nichols' implied warranty claims were defeated because they lacked contractual privity with Beaufort.<sup>22</sup> Rhode Island law dictates that when a builder sells a new house, the builder implicitly warrants to the purchaser that "the construction has been or will be done in a workmanlike manner and that the dwelling will be reasonably fit for human habitation."<sup>23</sup> This rule has been extended to protect buyers who purchased a new house following a one-year rental by the builder-vendor, since the house is still reasonably new and the tenancy short enough in duration to justify extending the implied warranties to the subsequent purchaser.<sup>24</sup>

In both cases, the warranties apply because homebuyers that rely on the professional competence of a builder should be protected from latently defective work.<sup>25</sup> However, the supreme court noted that the rule had not been extended to cover situations where a relatively new home was purchased from a vendor, rather than the builder of the home.<sup>26</sup> Therefore, the Nichols would not be able to recover from Beaufort even under the extended rule because they purchased the house from the original buyers, not from the builder.

Nevertheless, the Nichols argued that if the rule did not extend to subsequent homebuyers who are admittedly not in privity with the builder, only the first buyers will have protection from latent defects.<sup>27</sup> Since it is common for houses to have several owners, contractors will have no incentive to maintain high stan-

20. *See id.* at 177.

21. *Id.*

22. *See id.*

23. *Id.* (quoting *Padula v. J.J. Deb-Cin Homes, Inc.*, 298 A.2d 529, 531 (R.I. 1973)).

24. *See id.*

25. *See id.*

26. *See id.* (citing *Sousa v. Albino*, 388 A.2d 804, 805-06 (R.I. 1978)).

27. *See id.* at 179.

dards.<sup>28</sup> The Rhode Island Supreme Court agreed. The court enumerated eleven reasons in support of its holding that subsequent purchasers do not need to be in privity with the builder in order to sue the builder for breach of an implied warranty against latent defects.<sup>29</sup>

The court reasoned that the privity requirement should be abandoned because: (1) it defeats the purpose of the warranty, leaving subsequent purchasers without a remedy, (2) the warranty is intended to protect all innocent buyers, (3) transfer of ownership should not defeat the warranty, (4) defects typically appear over time, raising the probability that initial buyers will not discover latent defects, (5) it is foreseeable that there will be subsequent purchasers, (6) subsequent purchasers have little ability to inspect the construction, (7) builders are under a legal duty to construct habitable homes in a workmanlike manner, (8) limiting recovery to first purchasers could encourage builders to enter sham sales as a means of insulating themselves from liability, (9) builders are better able to insure themselves against mistakes than innocent purchasers, (10) the privity requirement has been abandoned for other contractual relationships, and (11) the tort statute of repose is inapplicable in a warranty case.<sup>30</sup>

However, the supreme court also made clear that the new rule is not without limitations.<sup>31</sup> Subsequent home owners may only bring warranty claims against the home builder where the defects are latent, not discoverable at the time of purchase and appearing only after the subsequent buyers' purchase.<sup>32</sup> In addition, suit may only be brought within three years of the time when the defects were discovered or should have been discovered.<sup>33</sup> Finally, the court made clear that the burden is on the plaintiffs to show that the builder's breach of warranty caused the latent defect.<sup>34</sup>

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28. *See id.*

29. *See id.*

30. *See id.* at 179-81.

31. *See id.* at 181.

32. *See id.*

33. *See id.* at 182.

34. *See id.*

CONCLUSION

In *Nichols v. R.R. Beaufort & Associates*, the Rhode Island Supreme Court made an important statement that will serve to protect consumers. Persons who do not purchase homes from the original builder may still hold the builder liable for breach of the implied warranties of habitability and workmanlike quality that result in latent defects to the house. The privity requirement is dropped in the interest of providing increased protection to home buyers and providing incentives for homebuilders to maintain quality workmanship.

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