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Mondoux v. Vanghel, 243 A.3d 1039 (R.I. 2021)

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Latent Defects. *Mondoux v. Vanghel*, 243 A.3d 1039 (R.I. 2021). Ten years is a reasonable amount of time to discover latent defects after substantial completion of an improvement to real property, and three years after such a discovery is a reasonable amount of time to bring a claim for breach of an implied warranty of habitability. Furthermore, original purchasers and subsequent purchasers are equally subject to this limitation.

FACTS AND TRAVEL

On December 24, 1997, plaintiffs, Reney and Joseph Mondoux, purchased and received a warranty deed for a lakeside house in Gloucester, Rhode Island, from the defendant, Peter Vanghel.¹ The house was constructed by the defendant who represented himself to the plaintiff as a licensed builder and sold the house as the builder-vendor.² At the time of sale, the house was substantially completed, requiring only deck stain and a refrigerator.³ In the Fall of 2012, the plaintiffs noticed “rotting” above the French doors on the lake-facing side of the house.⁴ After filing an insurance claim, the plaintiffs contracted with Robert L. Smith of C & L Builders, Inc, to examine the extent of water damage.⁵ On July 25 2013, Mr. Smith discovered that the defendant did not install “waterproof underlayment” around the door and windows on the lake-facing side of the house and that the subsequent rot would necessitate a complete replacement of that wall.⁶

On July 21, 2016, plaintiffs filed a complaint, thereafter amended on August 11, 2016, alleging breach of contract, breach of warranty, breach of implied warranty of habitability, negligence, breach of the implied covenant of good faith and fair dealing, fraud

1. *Mondoux v. Vanghel*, 243 A.3d 1039, 1040 (R.I. 2021).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 1041.

in the inducement, and negligent misrepresentation.⁷ The defendant answered the amended complaint on August 31, 2016 and moved for summary judgment on January 24, 2018.⁸ The defendant asserted that the tort claims were barred by the statute of repose under Rhode Island General Laws 1956 § 9-1-29 and that the claims for breach of warranty and breach of implied warranty of habitability were time-barred pursuant to the Court's holding in *Nichols v. R.R. Beaufort & Associates, Inc.*, 727 A.2d 174 (R.I. 1999).⁹ The plaintiffs argued that all of their claims were based in contract, thus, only the general statute of limitations for civil actions under General Laws § 9-1-13 applied and that the time limit did not begin to accrue until the inspection by Mr. Smith on July 25, 2013.¹⁰

The Superior Court, on April 15, 2018, granted summary judgment in favor of the defendant on all counts in the complaint.¹¹ Plaintiffs appealed, challenging specifically the grant of summary judgment regarding their claims of breach of contract, breach of express warranty, and breach of the implied warranty of habitability.¹² The Rhode Island Supreme Court, upon hearing arguments for and against the summary judgment regarding the breach of contract and breach of express warranty, affirmed the judgment of the Superior Court.¹³ However, the Court believed that cause had been shown to address whether the ten-year limitation on claims for breach of implied warranty of habitability, as held for subsequent purchasers in *Nichols*, should bar the plaintiffs claim.¹⁴

ANALYSIS AND HOLDING

The Rhode Island Supreme Court gave a prologue to its analysis by reiterating its standards of review on appeal for motions of

7. *Id.*

8. *Id.*

9. *Id.*; see 9 R.I. GEN. LAWS § 9-1-29 (1975); *Nichols v. R.R. Beaufort & Associates, Inc.*, 727 A.2d 174 (R.I. 1999) (subsequent purchaser of a home sued the original builder after the garage floor collapsed due to allegedly negligent construction).

10. *Mondoux*, 243 A.3d at 1041. See 9 R.I. GEN. LAWS § 9-1-13 (1978).

11. *Mondoux*, 243 A.3d at 1041.

12. *Id.* at 1042.

13. *Id.*

14. *Id.*

summary judgment. The Court stated that it reviews grants of summary judgment *de novo* and applies the same standard as the hearing justice.¹⁵ Furthermore, the Court noted that on appeal for motions of summary judgment, it views the evidence in the light most favorable to the nonmoving party and once the moving party establishes the absence of material factual issue, the opposing party has an “affirmative duty” to establish that a material factual issue still exists.¹⁶

By applying the long-established legal principal that exposure to liability must come to an end at some defined point in the interests of cost, surprise, and finality, the Court held that a ten year limit on discovery of latent defects (and subsequent three year limit on claims) strikes the right balance between the interests of home builders and the protection of home buyers.¹⁷ In the opening of its discussion on the case, the Court explained that the caselaw regarding breach of the implied warranty of habitability is “somewhat fog-shrouded,” and that neither the statutes nor the Court’s decision in *Nichols* were directly controlling.¹⁸ The Court went on to note that *Nichols* abolished the privity requirement between contractors and subsequent buyers to sustain a claim for breach of implied warranty, basing its decision on the idea that protections conferred to original buyers should also be shared with subsequent buyers.¹⁹ Yet, with this large potential expansion of liability, the Court in *Nichols* thought it prudent to recognize limitations as to avoid limitless liability.²⁰ The ten year limitation for discovery of latent defects for subsequent buyers that the Court arrived at in *Nichols* was an effort to harmonize contract and tort time limitations, as the statute of repose (§ 9-1-29) had already established a ten year limit on tort claims.²¹ The Court in *Nichols* used a similar reasoning to support the three year limit to bring a claim in contract for breach

15. *Id.* (citing *CFS 915, LLC v. Unetixs Vascular, Inc.*, 226 A.3d 1058, 1060-61 (R.I. 2020)).

16. *Id.* (citing *Cancel v. City of Providence*, 187 A.3d 347, 350 (R.I. 2018); *Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1109 (R.I. 2014)).

17. *Id.* at 1043.

18. *Id.*

19. *Id.* at 1044 (citing *Nichols v. R.R. Beaufort & Associates, Inc.*, 727 A.2d 174, 179 (R.I. 1999) (quoting *Lempke v. Dagenais*, 547 A.2d 290, 294 (N.H. 1988))).

20. *Id.*

21. *Nichols*, 727 A.2d at 182.

of implied warranty, because the statutory time limit of tort liability for malpractice of real-estate agents is three years.²² Thus, the Court reasoned in the present case that if subsequent buyers were limited to ten years to discover latent defects and three years to make claims on those defects, but original buyers were given a longer time to discover such defects and make claims, the whole purpose of *Nichols* would be undermined and the harmony between contract and tort liability limitations would be thrown off key.²³

In applying this holding to the present case, the Court found that because the plaintiffs purchased their house in 1997, had until 2007 to discover the latent defect, and did not discover the latent defect until July of 2013, their claim for breach of the implied warranty of habitability was time-barred.²⁴

COMMENTARY

Lengthy liability for latent defects has the potential to become a significant cost for constructors, building supply manufacturers, and distributors.²⁵ At a time when the United States is suffering from a historic housing shortage,²⁶ courts must weigh the benefits and burdens of all aspects of construction liability. Fortunately for Rhode Island, the Court successfully shored up this foggy area within Rhode Island jurisprudence by applying soundly reasoned legal rules and balanced policy objectives. The Court was careful in considering the rights of innocent homeowners while also understanding the potential burdens on home builders, engineers, and architects.²⁷ Furthermore, by maintaining consistency with Rhode Island tort laws, the Court improved the predictability of liability

22. *See id.* *See also* 9 R.I. GEN. LAWS § 9-1-14.1 (2018).

23. *Mondoux*, 243 A.3d at 1045.

24. *Id.*

25. James Duffy O'Connor, *Suppose Repose Were Indisposed: A True Story Prediction of Collapse and Disaster for the Construction Industry*, 34 THE CONSTR. LAW. 5, 7-8 (Fall 2014), https://www.maslon.com/webfiles/MaslonAttorneyPublications/Suppose_Repose_Were_Indisposed_A_True_Story_Prediction_of_Collapse_and_Disaster_for_the_Construction_Industry.pdf (discussing areas of increased costs for constructors, particularly focused on liability insurance premiums increasing).

26. Francesca Mari, *Will Real Estate Ever Be Normal Again?*, N.Y. TIMES MAG (Nov. 12, 2021), <https://www.nytimes.com/2021/11/12/magazine/real-estate-pandemic.html>.

27. *Mondoux*, 243 A.3d at 1044.

litigation and reiterated the equal protections afforded to subsequent purchasers.

CONCLUSION

The Rhode Island Supreme Court held that ten years was a reasonable time to discover latent defects after substantial completion of house construction. The Court further held that, upon discovery of such defects, three years is a reasonable time to bring a claim via tort or contract liability. Lastly, the Court held that there is no difference in the ability of an original and subsequent purchaser to pursue claims for breach of the implied warranty of habitability.

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