

Utah Supreme Court Decision
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The Utah Supreme Court issued an opinion recently that all developers and builders should know about. This article is intended to inform you of that decision and some of the Court's rulings. It is not intended to provide legal advice or opinion. For any such legal advice or opinion, contact your attorney.

The name of the case was, Davencourt HOA v Davencourt at Pilgrams Landing. The Court addresses many issues in the case, but I will only address three of them. Those three issues are: (1) the Economic Loss Doctrine; (2) Limited Fiduciary Duty; and, (3) Limited Warranty of Habitability.

Economic Loss Doctrine. This doctrine basically requires construction defect claims be brought under a breach of contract claim not a tort claim like negligence. The Court upheld the Economic Loss Doctrine, which was the largest issue for the builders and developers. The Utah HBA did participate in defending this part of the lawsuit. Plus, the Utah HBA was instrumental in passage of legislation two years ago that establishes this doctrine in the Utah State Code. The Court's action in relying on the new statute and upholding the Court's prior position on the Economic Loss Doctrine was huge.

Limited Fiduciary Duty. The Court examined what duty, if any, the developer owed to a home owners association created by the developer. The Court found that the developer does owe a duty to the association, but distinguished that duty between a typical fiduciary duty and a "Limited Fiduciary Duty." The Court stated:

"This concept arises from the nature of the developer's relationship with the association and its members. The Restatement expounds that treating the developer and its appointees to the board as trustees overstates the fiduciary component of the relationship. Given the developer's self-interest, the developer cannot be expected to act solely in the interests for the association and the homeowners. Conflicts of interest are inherent in the developer's role while it retains control of the association. While the developer thus should not be a fiduciary in the broadest sense, we are nonetheless convinced that the developer's control in this nonprofit association requires certain interests of the members and the association be protected. This is achieved by the limited fiduciary duty."

In defining this duty further, the Court adopted the following:

"Until the developer relinquishes control of the association to the members, the developer owes the following duties to the association and its members:

- (1) to use reasonable care and prudence in managing and maintaining the common property;
- (2) to establish a sound fiscal basis for the association by imposing and collecting assessments and establishing reserves for the maintenance and replacement of common property;
- (3) to disclose the amount by which the developer is providing or subsidizing services that the association is or will be obligated to provide;

- (4) to maintain records and to account for the financial affairs of the association from its inception;
- (5) to comply with and enforce the terms of the governing documents, including design controls, land-use restrictions, and the payment of assessments;
- (6) to disclose all material facts and circumstances affecting the condition of the property that the association is responsible for maintaining; and
- (7) to disclose all material facts and circumstances affecting the financial condition of the association, including the interest of the developer and the developer's affiliates in any contract, lease, or other agreement entered into by the association.

Implied Warranty of Habitability. The Court established that Utah was the only state in the union that did not recognize some sort of implied warranty of habitability. Thus, they have now adopted this standard for Utah. In so doing, the Court held, "Therefore, to establish a breach of the implied warranty of workmanlike manner or habitability under Utah law a plaintiff must show (1) the purchase of a new residence from a defendant builder-vendor/developer-vendor; (2) the residence contained a latent defect; (3) the defect manifested itself after purchase; (4) the defect was caused by improper design, material, or workmanship; and (5) the defect created a question of safety or made the house unfit for human habitation.

Once again, i must emphasize that is information does not constitute any legal advice or opinion, it simply for information purposes.