



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ZAMBRANO v. M & RC II LLC
CV-21-0205-PR**

PARTIES:

Petitioner: M & RC II LLC, and Scott Homes Development Company.

Respondent: Tina Zambrano.

FACTS:

Tina Zambrano (“Buyer”) signed a purchase agreement to buy a newly built home. In the agreement, Builder M & RC II LLC, and Scott Homes Development Company (collectively, “Builder”) granted Buyer a limited express warranty in exchange for Buyer waiving the implied warranty of habitability and workmanship. Paragraph 15 of the agreement therefore read as follows:

15. SELLER’S LIMITED WARRANTY. (a) At Closing, Seller [M & RC] shall issue a “Home Builder’s Limited Warranty” to Buyer, a sample of which has been provided to Buyer prior to the execution of this Contract. The Home Builder’s Warranty is the only warranty applicable to the purchase of the Property.

Buyer initialed paragraph 15. Immediately below her initials and as part of paragraph 15, the agreement reiterated:

THE HOME BUILDER’S LIMITED WARRANTY REFERENCED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THE PURCHASE OF THE PROPERTY. ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP ARE HEREBY DISCLAIMED BY SELLER AND ITS AFFILIATES AND WAIVED BY BUYER, ANY IMPLIED WARRANTY THAT MAY EXIST DE[S]PITE THE ABOVE DISCLAIMER IS HEREBY LIMITED TO A ONE (1) YEAR PERIOD.

According to Builder, the limited express warranty comprehensively covered each element of the home with 27 pages of objective construction standards. The limited express warranty’s cover page also specifically disclaimed any implied warranties, saying:

WE make no housing merchant implied warranty of habitability or any other warranties, express or implied, in connection with the sales contract or the warranted HOME, and all such warranties are excluded, except as expressly provided in this BUILDER’S LIMITED WARRANTY. There are no warranties which extend beyond the face of this

BUILDER’S LIMITED WARRANTY.

Four years after closing on the home, Buyer sued Builder for breach of the implied warranty of workmanship and habitability. She alleged that the home had “drywall nail pops and cracks” and “stucco cracks,” among other defects, but admitted that the home had no structural defects.

Builder filed a motion for summary judgment on Buyer’s implied warranty claim. In response, Buyer argued that her waiver of the implied warranty was unenforceable as a violation of Arizona public policy. In granting summary judgment for Builder, the trial court held that supplanting the implied warranty with a contractual limited express warranty did not violate public policy.

Buyer appealed. After briefing was completed, the Court of Appeals issued an Order Regarding Supplemental Briefing asking for a list of cases from other jurisdictions that had addressed waivers of the implied warranty of workmanship and habitability.

The Court of Appeals ruled for Buyer, holding that an express warranty in a purchase agreement for a newly-built home, even accompanied by an express disclaimer of other warranties, cannot supplant the implied warranty of workmanship and habitability that attaches to newly-constructed homes by operation of Arizona law. It concluded that the public policy underlying the implied warranty outweighed the public policy favoring freedom to contract. It recognized that this holding placed Arizona in a minority of states on the issue but held that it could not “chart that new direction without further guidance from our supreme court.” *Zambrano v. M & RC II LLC*, 252 Ariz. 10 ¶ 17 (App. 2021). Builder petitioned for review to the Arizona Supreme Court, which granted review.

ISSUE:

Does Arizona’s public policy prohibit a homebuilder and homebuyer from supplanting the implied warranty of habitability with an express warranty of their own choosing?

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