

CONSTRUCTION LAW ALERT

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New Home Buyers Beware! New Jersey Appellate Division Upholds A Mandatory Arbitration Provision In A New Home Warranty

On May 16, 2011, the New Jersey Appellate Division held in *Frumer v. National Home Ins. Co.*, A-1379-10 that the mandatory arbitration provision in a new home warranty issued pursuant to the New Home Warranty and Registration Act was valid and enforceable.

In *Frumer*, the plaintiff-homeowners executed a certificate of participation in a new home warranty plan which acknowledged receipt of a warranty booklet related to the purchase of their new home. According to the warranty booklet, the exclusive remedy for claims of major structural defects was arbitration. With regard to claims for workmanship and system defects, the warranty booklet afforded the homeowner the option to either file a warranty claim or to pursue other remedies. However, if the homeowner made a warranty claim, then arbitration was the exclusive remedy for the workmanship and systems defects claims as well.

Shortly after moving into their new home, the *Frumer* plaintiffs discovered numerous defects. These defects included a water leak in the basement, as well as deficiencies in roof gutters, window hardware, and the HVAC system. After negotiations with the builder failed, the plaintiff-homeowners registered a claim with the warranty

administrator identifying what they claimed to be workmanship/systems defects. The warranty administrator referred the claims to the warranty company. Several months after the repair work commenced, but before the work was complete, a dispute developed concerning the extent of the repairs. Rather than file their claims in arbitration pursuant to the warranty plan, the plaintiff-homeowners filed a claim in state court alleging breach of warranty against the warranty company and the warranty administrator (collectively “defendants”) and bad faith against the warranty company. When the defendants motion to compel arbitration and stay the action was denied, defendants appealed.

On appeal, the New Jersey Appellate Division acknowledged the strong public policy favoring arbitration in New Jersey. It also acknowledged that an arbitration agreement must be read liberally to enforce arbitration where reasonably possible. In reversing the lower court, the Appellate Division noted that plaintiffs’ new home warranty plan provided an election of remedies for disputes involving workmanship/systems defect claims but required arbitration where the homeowner files against the warranty. The Appellate Division further recognized that where a homeowner files a warranty claim for structural defects and the warranty plan

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expressly states that the exclusive remedy for such claims is binding arbitration, the arbitration provision is enforceable and the homeowners must pursue their warranty claims in arbitration.

The *Frumer* decision makes it clear that an arbitration provision in a new home warranty will be enforced and that new

home buyers in New Jersey must take care to review the warranty documents when purchasing a new homes. Such warranty documents may limit the remedies available to the homeowner if home construction problems arise. ■

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