



Subsequent Homeowners Bound by Arbitration Agreement

Kathryn Laflin

The Texas Supreme Court recently held that a subsequent purchaser of a home was required to arbitrate her claims against the builder for alleged construction defects. See *Lennar Homes of Texas Land & Construction, Ltd. v. Whiteley*, 672 S.W.3d 367 (Tex. May 12, 2023).

Lennar Homes built and sold the home to the original owner in 2014. The contract documents included a Purchase and Sale Agreement, Limited Warranty (issued by Lennar Homes), and warranty deed. In 2015, the original owner conveyed the house to Whiteley via a general warranty deed. Whiteley then brought suit against Lennar, alleging construction defects and breaches of the implied warranties of good workmanship and habitability. *Id.* Lennar Homes successfully moved to compel arbitration based on the Purchase and Sale Agreement and Limited Warranty and won at arbitration (the “Lennar Award”). *Id.*

Lennar Homes and Whiteley “filed cross-motions to confirm and to vacate the award [i.e. the Lennar Award], disputing whether the subsequent purchaser was bound by arbitration clauses in the builder's purchase-and-sale agreement with the original purchaser and in its deed to that purchaser.” *Id.*

Whiteley argued that the Lennar Award should not be enforced because there was not a valid arbitration agreement between Lennar Homes and Whiteley, and (2) Whiteley's claims were not contract-based. The Texas Supreme Court rejected both of these arguments. In this regard, the Court noted that the implied warranties of good workmanship and habitability are "as much a part of the writing as the express terms of the contract and are automatically assigned to subsequent purchasers." See *Taylor Morrison of Texas, Inc. v. Kohlmeyer*, 672 S.W.3d 422 (Tex. 2023) (citing *Lennar Homes*. at 377-78). The Court also concluded that the homebuilder's liability was not independent of its contractual undertaking because any implied warranty of good workmanship must survive supplantation by an express warranty in the original purchase contract. *Id.*; see also, *MAN Engines & Components, Inc. v. Shows*, 434 S.W.3d 132, 140 (Tex. 2014) (holding that a downstream purchaser "cannot obtain a greater warranty than that given to the original purchaser").

Similarly, the Texas Supreme Court held that any claim based on the implied warranty of habitability would depend on the content of the purchase agreement's disclosures. *Lennar Homes*, 672 S.W.3d at 379-80; see also *Centex Homes v. Buecher*, 95 S.W.3d 266, 275 (Tex. 2002) (holding the implied warranty of habitability "does not include defects, even substantial ones, that are known by or expressly disclosed to the buyer").

The Ultimate Effect - The doctrine of direct-benefits estoppel has now been applied by the Texas Supreme Court to enforce arbitration agreements on the following: (1) homeowners; (2) homeowners' spouses and minor children (see *Taylor Morrison of Tex., Inc. v. Ha*, 660 S.W.3d 529, 533 (Tex. 2023); and (3) downstream purchasers of recently constructed homes (as detailed above). Accordingly, Texas continues to provide developers and builders with a strong legal framework to arbitrate disputes, even with subsequent purchasers.

About the Author



Kathryn Laflin focuses her practice on litigation pertaining to insurance coverage, product liability, real estate, commercial litigation and construction issues. She particularly enjoys working on the more complex commercial litigation such as mass torts cases because of the intellectual challenges they present and the need to closely track all the involved parties and moving parts.

If you have any questions or would like to discuss the topic, Kathryn is available via email at: klaflin@krcl.com and phone at: 713-425-7434.