

**From:** Tim Fitzgerald  
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**Gallagher Sharp Newsflash:** **Home Builder's Duty to Construct in a Workmanlike Manner Not Waivable**

Today, March 14, 2012, the Supreme Court of Ohio held that a home builder's duty to construct a home in a workmanlike manner using ordinary care is a duty imposed by law, and that a home buyer's right to enforce that duty cannot be waived in a contract purporting to relieve the builder of that duty. *Jones v. Centex Homes*, Slip Opinion No. 2012-Ohio-1001.

The plaintiffs in *Jones* had purchased new homes from Centex Homes in 2004. After moving in, both buyers found that their computers, cordless telephones and televisions did not operate properly. The interference problem was caused allegedly by steel beams used in the construction of the houses being magnetized. Suit was filed after efforts by Centex to remediate the problem were unsuccessful. The trial court and appellate courts both ruled that the buyers' claims against Centex were barred due to the fact that the defect was not listed as a covered item in the Limited Home Warranty that Centex Homes provided in its standard purchase agreement with the buyers.

The Supreme Court reversed and, clarifying its prior case law, held that the requirement for a house to be constructed in a workmanlike manner is not an implied warranty, but instead is a tort duty imposed by law. This is not a radical change in Ohio law as the duty to construct a house in a workmanlike manner using ordinary care has been imposed on Ohio home builders since the Supreme Court's 1966 decision in *Mitchem v. Johnson*. However, the *Jones* opinion is noteworthy because of the Court's holding that the duty to construct a home "in a workmanlike manner using ordinary care" cannot be waived in a contract.

Writing for the unanimous Court, Justice Paul Pfeifer noted,

"We conclude that the duty to construct a house in a workmanlike manner using ordinary care is the baseline standard that Ohio home buyers can expect builders to meet. The duty does not require builders to be perfect, but it does establish a standard of care below which builders may not fall without being subject to liability, even if a contract with the home buyer purports to relieve the builder of that duty. Accordingly, we conclude that a home builder's duty to construct a house in a workmanlike manner using ordinary care is a duty imposed by law, and a home buyer's right to enforce that duty cannot be waived."

Justice Pfeifer's opinion was joined by Chief Justice Maureen O'Connor and Justices Evelyn Lundberg Stratton, Terrence O'Donnell, Judith Ann Lanzinger and Yvette McGee Brown. Justice Robert R. Cupp concurred in judgment only.

A link to the Jones opinion is here:

<http://www.supremecourtofohio.gov/rod/docs/pdf/0/2012/2012-ohio-1001.pdf>.

If you have any questions, please contact:

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