



Appellate Court of Illinois,
 First District, First Division.

Michael H. **MINTON** and Mary **Minton**, Plaintiffs-
 Appellants,

v.

The **RICHARDS** GROUP OF CHICAGO, through
 its agent, Josef MACH; PDS Construction, A & E
 Plumbing, Defendants,

and

International Decorating, Inc., a corporation, Defen-
 dant-Appellee.

No. 82-2152.

Aug. 8, 1983.

Plaintiffs appealed from an order of the Circuit Court of Cook County, Gerald T. Rohrer J., dismissing with prejudice their complaint brought against subcontractor who worked on their new house. The Appellate Court, McGloon, J., held that where plaintiffs, innocent purchasers, had no recourse to the builder-vendor due to its dissolution and allegedly sustained loss due to the faulty and latent defects in their new home caused by the subcontractor, the warranty of habitability applied to such subcontractor.

Reversed and remanded.

West Headnotes

[\[1\] Contracts 95](#) [205.35\(2\)](#)

[95](#) Contracts

[95II](#) Construction and Operation

[95II\(C\)](#) Subject-Matter

[95k205](#) Warranties

[95k205.35](#) Sale of Dwellings; Habita-

bility

[95k205.35\(2\)](#) k. New Buildings;

Sales by Builders and Commercial Activity. [Most Cited Cases](#)

(Formerly 95k205)

Implied warranty of habitability against latent defects

in a new house is a separate covenant between vendor and vendee which arises due to the unusual dependent relationship; purpose of warranty is to protect purchasers' expectations by holding builder-vendors accountable.

[\[2\] Contracts 95](#) [186\(2\)](#)

[95](#) Contracts

[95II](#) Construction and Operation

[95II\(B\)](#) Parties

[95k185](#) Rights Acquired by Third Persons

[95k186](#) Privity of Contract in General

[95k186\(2\)](#) k. Building and Road

Construction Contracts. [Most Cited Cases](#)

Where innocent purchasers of a new house had no recourse to the builder-vendor due to its dissolution and allegedly sustained loss due to faulty and latent defect in their new home caused by subcontractor, the implied warranty of habitability against defects in a new house applied to such subcontractor.

853** *836** *****583** Uwe Brasch, Schaumburg, for plaintiffs-appellants.

No appellee's brief.

McGLOON, Justice:

The plaintiffs, Michael H. **Minton** and Mary **Minton**, appeal from an order of the circuit court of Cook County dismissing their amended complaint with prejudice. They contend that the trial court erred by ruling that they failed to state a cause of action against International Decorating, Inc., one of the defendants herein. This defendant did not file a brief, but we find that this does not prevent resolution of this appeal. [First Capitol Mortgage Corporation v. Talandis Construction Corporation \(1976\)](#), 63 Ill.2d 128, 345 N.E.2d 493.

Plaintiffs filed a complaint alleging that they contracted for the purchase of a new home to be constructed by The **Richards** Group of Chicago (RGC); that defendants PDS Construction, A & E Plumbing and International Decorating, Inc., worked on the

home “under the supervision” of RGC; and that the premises constructed were uninhabitable and violated the implied warranty of habitability. Thereafter, on motion of the plaintiffs, RGC, PDS Construction and A & E Plumbing were dismissed as parties defendant.

The plaintiffs then filed an amended complaint alleging that International Decorating, Inc., a corporation had entered into an agreement with RGC to paint the eaves and windows of plaintiffs' new home, and that within 90 days after plaintiffs took possession of the premises pursuant to their agreement with RGC, the paint on the eaves and windows began to peel; that despite demands that the matter be corrected, no action had been taken to remedy the situation; and that RGC, a Delaware corporation, has since been dissolved. The amended complaint asked for judgment in the sum of \$3,000 plus attorney fees and costs.

On motion of the defendant, International Decorating, Inc., the trial court struck the amended complaint and granted the plaintiffs 28 *854 days within which to file a second amended complaint, which plaintiffs failed to do. Thereafter, the trial court dismissed plaintiffs' amended complaint with prejudice.

Plaintiffs contend that the builder-vendor implied warranty of habitability against latent defects in a new house also applies to the subcontractors of the builder-vendor where the builder-vendor is dissolved and shows no assets.

[1] The warranty of habitability is a creature of public policy and a judicial innovation that has evolved to protect purchasers of new houses upon discovery of latent defects in their homes. ([Peterson v. Hubschman Construction Co. \(1979\)](#), 76 Ill.2d 31, 27 Ill.Dec. 746, 389 N.E.2d 1154.) The implied warranty of habitability is a separate covenant between the vendor and vendee which arises because of the unusual dependent relationship. ([Herlihy v. Dunbar Builders Corp. \(1980\)](#), 92 Ill.App.3d 310, 47 Ill.Dec. 911, 415 N.E.2d 1224.) While this warranty has roots in the execution of the contract for sale, it exists independently and privity of contract is not required. The **837 ***584 purpose of the warranty is to protect purchasers' expectations by holding building-vendors accountable. [Redarowicz v. Ohlendorf \(1982\)](#), 92 Ill.2d 171, 65 Ill.Dec. 411, 441 N.E.2d

[324](#).

In [Tassan v. United Development Co. \(1980\)](#), 88 Ill.App.3d 581, 43 Ill.Dec. 769, 410 N.E.2d 902, this court extended the warranty of habitability between builder-vendors and purchasers to developer-vendors and condominium purchasers. In [Redarowicz v. Ohlendorf](#), the supreme court extended the warranty of habitability to subsequent purchasers where there is a short intervening ownership by the first purchaser.

[2] In the present case the record discloses that no builder-vendor to vendee relationship existed between plaintiffs and International Decorating. The plaintiffs allege that subsequent to the peeling of the paint on the eaves and windows of their new home, they informed RGC, through its representative, Joseph Mach, of the condition of the paint; that Joseph Mach informed them he would speak to International Decorating to remedy the situation; and that subsequent letters sent by the plaintiffs to International Decorating requesting that the matter be remedied were ignored.

This court is asked to extend the warranty of habitability to the subcontractors of a builder-vendor where the builder-vendor has been dissolved as an entity and is insolvent. Purchasers from a builder-vendor depend upon his ability to construct and sell a home of sound structure and his ability to hire subcontractors capable of building a home of sound structure. The plaintiffs here had no control over the choice of RGC to paint the eaves and windows of their home, and RGC was in the better position to know which subcontractor could *855 perform the work adequately.

In this case we agree with the reasoning in [Redarowicz](#) that the purpose of the implied warranty is to protect innocent purchasers. For that reason, we hold that in this case where the innocent purchaser has no recourse to the builder-vendor and has sustained loss due to the faulty and latent defect in their new home caused by the subcontractor, the warranty of habitability applies to such subcontractor. We recognize that our opinion is contrary to [Waterford Condominium v. Dunbar Corp. \(1982\)](#), 104 Ill.App.3d 371, 60 Ill.Dec. 110, 432 N.E.2d 1009, but that opinion was rendered prior to [Redarowicz v. Oh-](#)

lendorf.

The judgment of the circuit court of Cook County is therefore reversed, and the cause is remanded for further proceedings.

JUDGMENT REVERSED; CAUSE REMANDED.

BUCKLEY, P.J., and GOLDBERG, J., concur.
Ill.App. 1 Dist., 1983.
Minton v. Richards Group of Chicago Through Mach
116 Ill.App.3d 852, 452 N.E.2d 835, 72 Ill.Dec. 582

END OF DOCUMENT