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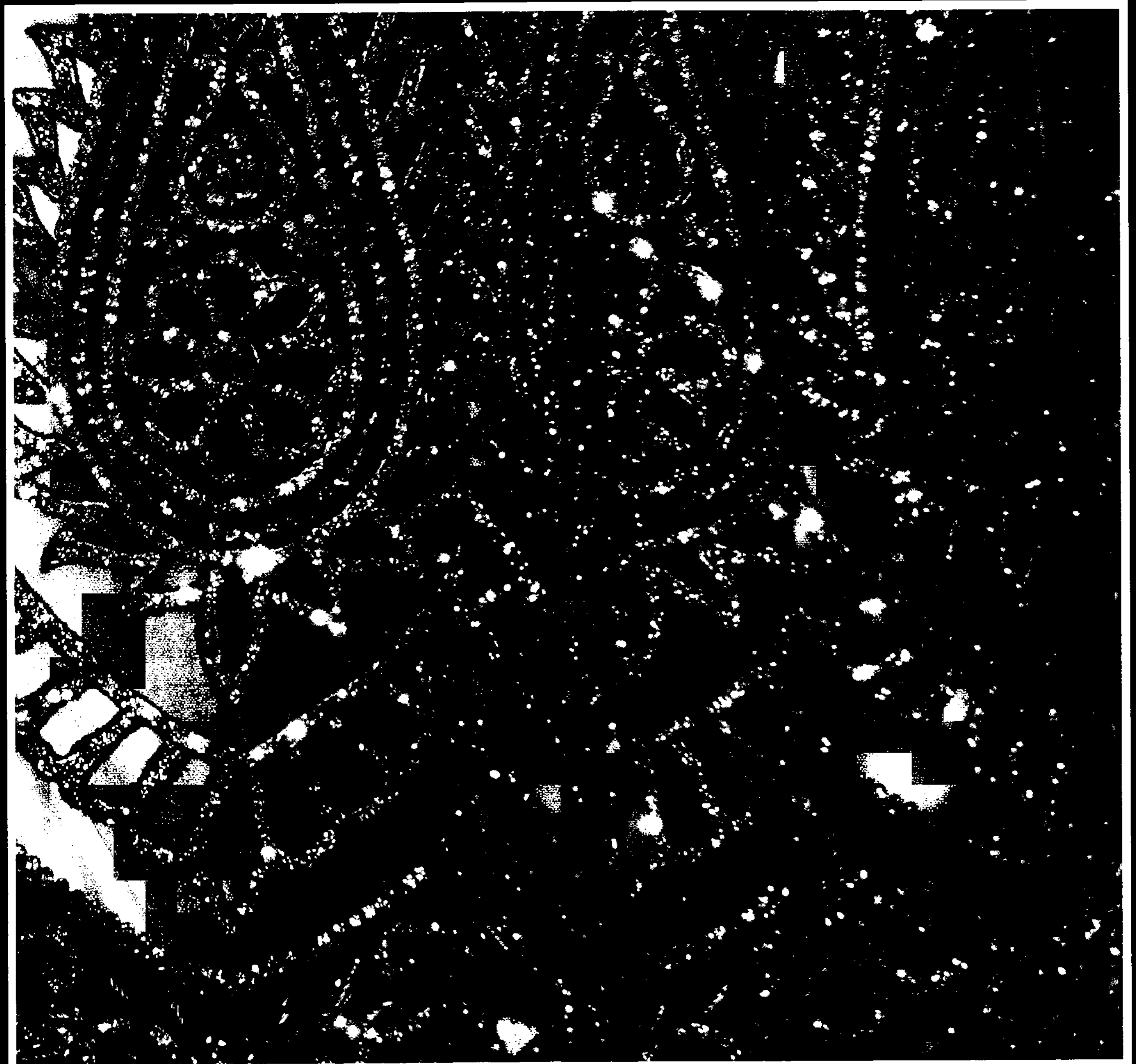

IMPLIED WARRANTIES EXTENDED TO "ESSENTIAL SERVICES"

Construction Law Section

Chairs: Jeff Paskert - Mills Paskert Divers, P.A.; and Mark Smith - Carlton Fields, P.A.

For 40-plus years, Florida law implied warranties to new home purchasers but restricted these protections to structures that "immediately support" a residence. In *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association, Inc.*, — So.3d —, 2013 WL 3466814 (Fla. July 11, 2013), the Florida Supreme Court altered this established standard and extended implied warranties of fitness and merchantability to "essential services" to the habitability of a residence.

Maronda arose from drainage problems (flooded lawns, driveways, collapsed storm drains, stagnant water) in a newly built residential subdivision. Specifically, the claimant homeowners' association alleged the flooding resulted in soil erosion, buckling and splitting of pavement, retention ponds overflowing, and standing water, creating safety hazards and mosquito infestation.

Seeking redress, Lakeview Reserve brought suit alleging breach of the implied warranties of fitness and merchantability and that developer Maronda "defectively designed and constructed the subdivision's infrastructure, roadways, retention ponds, underground pipes, and drainage systems."

Implied warranties of fitness and merchantability apply to improvements providing essential services to the habitability of a home.

At the circuit court, Maronda obtained summary judgment on the basis that the implied warranties did not apply because the defective conditions did not "immediately support" the residences. The Fifth District Court of Appeals extended the implied warranties of fitness for a particular purpose, habitability, and merchantability to improvements to real property that provide "essential services" for the home. The court defined "essential services" as items necessary for living accommodations such as roads, drainage systems, retention

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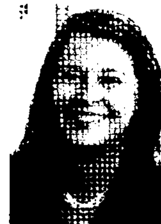
ponds, and underground pipes, but excluded landscaping, sprinkler systems, recreational facilities, security systems, and other items that are "mere convenience or aesthetic beauty." The Fifth District concluded that "implied warranties of fitness for a particular purpose, habitability, and merchantability apply to structures in common areas of a subdivision that immediately support the residence in the form of essential services."

The Florida Supreme Court adopted the Fifth District's "essential services" analysis and held "the law of implied warranties of fitness and merchantability apply to improvements that provide essential services to the habitability of a residence." Applying this test to Lakeview Reserve's flooding problems, the court concluded that the improvements involved, though not physically attached to the homes, provided essential services for habitability and "immediately supported" the residences.

The full impact of *Maronda* is unclear; however, it is a significant development favoring consumers and adopting a new "essential services" test as the guideline for application of implied warranties.

It should be noted that *Maronda* also addressed Florida Statute Section 553.835, which was enacted during *Maronda*'s pendency and rejected the Fifth District's implied warranties expansion. The court concluded that the statute could not be retroactively applied to Lakeview Reserve's vested cause of action and therefore was inapplicable. The court noted in dicta that the statute "violates the right of access to courts because it attempts to abolish the common law cause of action for breach of implied warranties for certain injuries," in "clear violation of separation of powers." Accordingly, Section 553.835 appears squarely in the sights of the Florida Supreme Court and may be struck down if it comes before the court again.



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