



Litigators Help Colorado Developers Set Precedent in Construction Defect Case

Client: Forest City

"In a precedent-setting construction defect case, Brownstein's litigation team achieved a successful ruling on appeal for a Colorado developer client."

In a ruling that may have lasting importance for developers, builders, contractors, designers, and homeowners in Colorado, the Colorado Court of Appeals considered the circumstances under which an implied warranty applies between developers that improve and sell raw land used for home construction and secondary home buyers. The Court of Appeals also held that a master developer was not liable for actions taken by a metropolitan district during construction.

A team of Brownstein litigators led by Hubert Farbes and Jonathan Pray successfully defended our client Forest City in court, thus helping set a precedent in an area of uncertainty for Colorado developers moving forward.

After groundwater and calcite began to leach into a homeowner's basement in the Stapleton neighborhood of Denver, he sued the master developer of the Stapleton community, Forest City. The homeowner argued that by allowing the homebuilder to construct a basement on a "finished lot," Forest City made an implied warranty that the lot was suitable for a home with a basement. At trial, Forest City argued that it did not have any role in the homeowner's or the homebuilder's decision to build a basement on the lot—and instead provided the homebuilder with all of the information available to it respecting the lot's subsurface and groundwater conditions. A Denver jury found in favor of the homeowner, but Brownstein successfully appealed.

"We think the significance of this is great . . . The real estate development industry in Colorado now has a more or less clear signal—the master developer has a very limited warranty obligation to an ultimate homebuyer, and trial courts must utilize this standard in instructing the jury for these kind of cases going forward," Farbes told *Law Week Colorado*. "I think everyone is now in a position to feel . . . at least greater certainty regarding what the standards for review will be, and they are now captured in a published opinion of the Court of Appeals."

The case is now before the Colorado Supreme Court, which will decide whether to review the Court of Appeals' decision.

Meet The Team

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