

**November 26, 2013**

On October 4, 2013 Judge Gama held oral arguments on a number of motions filed by Del Webb. The motions filed by Del Webb and the Court's ruling on each motion are as follows:

1. Partial Motion for Summary Judgment on the Plaintiff's Class Cause of Action for Breach of Implied Warranties: **Granted.**

This order dismisses 760 homes from the Class that were sold after February 2, 2010. This ruling affects homes where the seller assigned its chose in action to the buyer as part of the sale, as well as homes where no assignment was made. The Class intends to appeal this ruling because a cause of action for breach of the implied warranty of workmanship and habitability that seeks damages arising out of property damage to real property does not abate the instant that title to the damaged real property is transferred to a new owner. The Arizona Supreme Court has stated:

"It has long been the law in Arizona, and the law in most if not all jurisdictions that an assignee of a chose in action may maintain suit thereon in his own name. He need not be the full party in interest, and the debtor or alleged obligor is not prejudiced as he may assert his defenses as fully against the assignee as he could the original claimant.

*General Accident Fire & Life Insurance Corporation v. Little*, 103 Ariz. 435, 437 (1968), citations omitted.

As to the 760 homes excluded by this Ruling, a list of which are attached [here](#), there is an owner of each chose in action. The owner of the chose in action is either (1) the owner of the real property at the time of notice of the class action if that owner did not assign the chose in action when he or she sold the real property, or (2) the purchaser of the real property if assigned the chose in action when the real property was purchased.

In the event the appeal is unsuccessful and the ruling stands, homes sold with no assignment will be removed from the Class. In addition, homes sold with an assignment may also be removed from the Class.

2. Partial Motion for Summary Judgment on Certain Claims Being Barred by the Statute of Repose Due to Lack of Required Injury within Time Period: **Denied.**

3. Partial Motion for Summary Judgment on All Claims Brought by Plaintiffs who Purchased Homes as Foreclosures with "As Is" Provisions: **Denied.**

4. Motion to Divide Class into Subclasses: **Denied.**

5. Partial Motion for Summary Judgment on Certain Claims Being Barred Because Certain Plaintiffs Fall Outside of the Defined Class: **Granted.**

This order dismisses 632 homes from the Class that do not have any underslab copper piping or have had the underslab piping abandoned and replaced with PEX piping. A list of the homes is attached [here](#).