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***Sirrah Enterprises, LLC v. Wunderlich,* CV-16-0156-PR (2017)**

The implied warranty of workmanship and habitability ("Implied Warranty") is imputed into all residential building contracts. Any claim for a breach of the Implied Warranty, even if brought by a subsequent purchaser, arises from the original construction contract and the successful party qualifies for an award of reasonable attorneys' fees under either the contractual fee provision or ARIZ. REV. STAT. § 12-341.01.

Sirrah Enterprises entered into a residential construction contract to build a "basement through exterior walls" at the home of Wayne and Jackquline Wunderlich. The Wunderlichs partially paid Sirrah, but refused to pay the full contract amount, claiming construction defects. Sirrah sued for the unpaid amount. The Wunderlichs counterclaimed for breach of the "Implied Warranty" and other claims. A jury found in Sirrah's favor on its claim and awarded it $31,374, but the jury found in the Wunderlichs' favor on their breach of the Implied Warranty claim and awarded them $297,782. The trial court then determined the Wunderlichs were the prevailing party, and awarded them attorney fees pursuant to both a contractual fee provision and ARIZ. REV. STAT. § 12-341.01.

The Court of Appeals affirmed the award under the contractual fee provision, but held that ARIZ. REV. STAT. § 12-341.01 did not apply.

On appeal, the Arizona Supreme Court vacated the Court of Appeals decision and held that for *any* Implied Warranty claim, attorneys' fees may be awarded under *either* an applicable contract provision, or if no contract provision exists, ARIZ. REV. STAT. § 12-341.01.

While the Sirrah appeal did **not** involve subsequent purchasers, the Supreme Court explained, "The [Implied] Warranty is a term imputed by law into an express contract and can be enforced by subsequent homeowners . . . ARIZ. REV. STAT. § 12-341.01(A) therefore authorizes a fee award for the successful party on a claim for breach of the Implied Warranty because the claim 'arises out of' an express contract." Accordingly, the decision overrules the appellate decisions in *Sullivan v. Pulte Home Corp. (Sullivan I)*, 231 Ariz. 53, 62 (App. 2012), *vacated in part on other grounds*, 232 Ariz. 344 (2013) and in *N. Peak Constr., LLC v. Architecture Plus, Ltd.*, 227 Ariz. 165, 167, 170 (App. 2011) to the extent they held ARIZ. REV. STAT. § 12-341.01(A) does not apply to implied-in-law contracts.