
IN THE SUPREME COURT OF ILLINOIS

JOHN FATTAH,)	From the Appellate Court of Illinois
)	First District
Plaintiff-Respondent,)	No. 14-0171
)	
v.)	There heard on Appeal from the
)	Circuit Court of Cook County,
MIREK BIM and ALINA BIM,)	County Department, Law Division
)	Case No. 11 L 6937
Defendants-Petitioners.)	
)	The Honorable Sanjay T. Tailor
)	Judge Presiding

BRIEF OF *AMICI CURIE*

**HOME BUILDERS ASSOCIATION OF ILLINOIS, BLOOMINGTON/NORMAL AREA HOME BUILDERS ASSOCIATION, HOME BUILDERS ASSOCIATION OF GREATER CHICAGO, METRO DECATUR HOME BUILDERS ASSOCIATION HOME BUILDERS ASSOCIATION OF EAST CENTRAL ILLINOIS, EFFINGHAM AREA HBA, NORTHERN ILLINOIS HOME BUILDERS ASSOCIATION, HOME BUILDERS ASSOCIATION OF GREATER PEORIA, HOME BUILDERS ASSOCIATION OF THE GREATER ROCKFORD AREA, QUAD CITIES BUILDERS & REMODELERS ASSOCIATION, INC., AN IOWA NOT-FOR-PROFIT CORPORATION, HOME BUILDERS ASSOCIATION OF QUINCY, HOME BUILDERS ASSOCIATION OF THE GREATER SOUTHWEST ILLINOIS, SOUTHWEST SUBURBAN HOME BUILDERS ASSOCIATION, SPRINGFIELD AREA HOME BUILDERS ASSOCIATION, AND NATIONAL ASSOCIATION OF HOME BUILDERS AND ILLINOIS CHAMBER OF COMMERCE
IN SUPPORT OF DEFENDANTS-APPELLANTS MIREK BIM AND ALINA BIM**

John P. Cooney
Jeffrey D. Corso
Cooney Corso & Moynihan, LLC
1423 Centre Circle
Downers Grove IL 60515
630.675.2828
630.390.2390
jcooney@ccvmlaw.com
Attorneys for Amici Curiae

POINTS AND AUTHORITY

	Page
Introduction	
U.S. Census Bureau, <i>Construction Building Permit Survey Reports, New Privately-Owner Units Authorized by Builder Permits in Permit-Issuing Places in the State of Illinois</i> (2015). https://www.census.gov/construction/bps/pdf/annualhistorybystate.pdf?cssp=SERP	3(<i>fn</i> 1)
U.S. Census Bureau, <i>Building Permits Survey, Permits by State-Annual</i> (2014) https://www.census.gov/construction/bps/txt/tb2u2014.txt	3(<i>fn</i> 1)
U.S. Census Bureau, <i>Building Permits Survey, Permits by State-Annual</i> (2009) https://www.census.gov/construction/bps/txt/tb2u2009.txt	3(<i>fn</i> 1)
U.S. Census Bureau, <i>Building Permits Survey, Permits by State-Annual</i> (2005) https://www.census.gov/construction/bps/txt/tb2u2005.txt	3(<i>fn</i> 1)
NAHB, <i>The Economic Impact of Home Building in Illinois 2000-2005 Average, Income, Jobs, and Taxes Generated</i> . Housing Policy Department, Feb 2010;	3(<i>fn</i> 1)
NAHB, <i>The Economic Impact of Home Building in Illinois 2009 Average, Income, Jobs, and Taxes Generated</i> . Housing Policy Department, Feb 2010	3(<i>fn</i> 1)
Natalia S. Siniavskaja, Ph.D., <i>State and Metro Area House Prices; the “Priced Out” Effect</i> (August 1, 2014) https://www.nahb.org/en/research/housing-economics/special-studies/state-and-metro-area-house-prices-the-priced-out-effect-2014.aspx .	4(<i>fn</i> 2)

ARGUMENT

**THE APPELLATE COURT ERRED IN REWRITING
THE ORIGINAL CONTRACT TO ELIMINATE
THE WAIVER OF THE IMPLIED WARRANTY OF HABITABILITY**

H&M Commercial Driver Leasing, Inc. v. Fox Valley Containers, Inc.,
209 Ill.2d 52, 57 (2004) 5

*Progressive Universal Insurance Company of Illinois v. Liberty Mutual Fire Insurance
Company*, 215 Ill.2d 121, 129, 130 (2005) 5

Smith v. Grubb, 402 Ill. 451, 464, 465 (1949) 6

Provident Federal Savings & Loan Association v. Realty Centre, Ltd, 97 Ill.2d 187, 192
(1983) 6

The Cadle Company II, Inc., v. Stauffenberg, 221 Ill.App.3d 267 (3rd Dist. 1991) 6

225 ILCS 441/1-5 *et seq.* 7

225 ILCS 441/1-10 7

THE IMPLIED WARRANTY OF HABITABILITY WAS WAIVED.

Peterson v. Hubschman Construction Co., 76 Ill.2d 31, 42, 43 (1979) 8

Redarowicz v. Ohlendorf, 92 Ill.2d 171, 176 (1982) 8, 9

Board of Managers of Chestnut Hills Condominium Association v. Pasquinelli, Inc.,
354 Ill. App. 3d 749, 758 (2004)

9

Herlihy v. Bunbar Builders Corp., 92 Ill. App. 3d 310, 317

9

*Board of Managers of the Village Centre Condominium Association, Inc.
v. Wilmette Partners*, 198 Ill. 2d 132, 141 (2001)

9

Thompson v. Gordon, 241 Ill.2d 428, 449 (2011)

10

Minton v. The Richards Group of Chicago, 116 Ill. App. 3d 852

10

Henderson Square Condominium Association v. Lab Townhomes, LLC,
2015 IL 118139 (Nov. 4, 2015)

10 (fn 3)

68 Ill. Adm. Code §§ 1410.10, *et seq.*)

12 (fn 4)

820 ILCS 305/1 *et seq.*

12

815 ILCS 513/1 *et seq.*

12

STATEMENT OF INTEREST OF *AMICI CURIAE*

The Home Builders Association of Illinois, an Illinois not-for-profit corporation, Bloomington/Normal Area Home Builders Association, an Illinois not-for-profit corporation, Home Builders Association of Greater Chicago, an Illinois not-for-profit corporation, Metro Decatur Home Builders Association an Illinois not-for-profit corporation, Home Builders Association of East Central Illinois, an Illinois not-for-profit corporation, Effingham Area HBA, Northern Illinois Home Builders Association, an Illinois not-for-profit corporation, Home Builders Association of Greater Peoria, an Illinois not-for-profit corporation, Home Builders Association of the Greater Rockford Area, an Illinois not-for-profit corporation, Quad Cities Builders & Remodelers Association, Inc., an Iowa not-for-profit corporation, Home Builders Association of Quincy, an Illinois not-for-profit corporation, Home Builders Association of the Greater Southwest Illinois, an Illinois not-for-profit corporation, Southwest Suburban Home Builders Association, an Illinois not-for-profit corporation, Springfield Area Home Builders Association, an Illinois not-for-profit corporation, and National Association of Home Builders (“NAHB”) (collectively referred to the “HBAs”) and the Illinois Chamber of Commerce (“Chamber”) submit this Brief of *Amici Curiae* in support of Defendants-Appellants Mirek Bim and Alina Bim.

The HBAs are a collective of state, local and national trade associations comprised of builders, subcontractors and other entities involved in the residential home building industry. There are in excess of 1,500 individuals, corporations, partnerships and

other legal entities who are members of the HBAs in Illinois. The HBAs purposes are to provide builders, contractors, developers and subcontractors a forum to protect and promote the building industry, protect the interests of builders, generate quality standards and provide new home ownership and affordable housing for residents of Illinois.

NAHB is a federation of more than 140,000 members in 800 state and local associations. These affiliated associations include 14 state and local associations in Illinois. NAHB's builder members construct about 80 percent of the new homes each year in the United States. NAHB's mission is to enhance the climate for housing and the building industry and provide and expand opportunities for all people to have safe, decent, and affordable housing.

The HBAs and their members work for the American dream of home ownership, as well as for the development of housing that creates vibrant and affordable communities. The HBAs are a vigilant advocate in the Nation's courts, and frequently participates as a party or *amicus curiae* to safeguard the rights of their members. This matter is one such case, where the HBAs' feel compelled to act. The wholesale change in the law as it pertains to the waiver of the implied warranty of habitability will have a dramatic and severe consequence on the building industry and affect home ownership.

The Chamber is the voice of business within the state. Its "association" consists of manufacturers, railroads, insurers, retailers, banks and a host of other industrial and commercial concerns, including those involved in the construction and building industries. Those businesses provide jobs to a myriad of Illinois workers as well as income which is applied to the general economy in the form of redistributed expenditures, profits and taxes. Recognizing the significance of the question which is

presented by this appeal, and its impact upon the construction and building industries throughout the state, and thereby the public in general, the Chamber wants to make known its position on the issue in this case and to state its views on the adverse impact affirmance of the Appellate Court's decision would have on the economy and business climate throughout the State of Illinois.

INTRODUCTION

The home building industry has gone through an extensive change over the past 13 years. In 2005, the construction of 47,705 single family homes in Illinois, generated 188,442 jobs, \$12,500,000,000 in income, and \$2,800,000,000 in tax and other revenue to state and local governments. In 2009, the number of single family homes dropped to 7,844, resulting in only 24,543 jobs, \$1,900,000,000 in income, and \$444,200,000 in tax revenues. In 2014 this only increased to 10,553 in new single family houses, which is still 78% less than in 2005.¹

¹ U.S. Census Bureau, *Construction Building Permit Survey Reports, New Privately-Owner Units Authorized by Builder Permits in Permit-Issuing Places in the State of Illinois* (2015). Available at <https://www.census.gov/construction/bps/pdf/annualhistorybystate.pdf?cssp=SERP>, page 14 (Illinois); accessed 2/8/2015 (Ex 1 to Motion for Leave to File *Brief of Amici Curiae*); U.S. Census Bureau, *Building Permits Survey, Permits by State-Annual* (2014). Available at <https://www.census.gov/construction/bps/txt/tb2u2014.txt>; accessed 12/8/2015.(Ex 2 to Motion for Leave to File *Brief of Amici Curiae*); U.S. Census Bureau, *Building Permits Survey, Permits by State-Annual* (2009). Available at <https://www.census.gov/construction/bps/txt/tb2u2009.txt>; accessed 12/8/2015 (Ex 3 to Motion for Leave to File *Brief of Amici Curiae*); U.S. Census Bureau, *Building Permits Survey, Permits by State-Annual* (2005). Available at <https://www.census.gov/construction/bps/txt/tb2u2005.txt>; accessed 12/8/2015 (Ex 4 to Motion for Leave to File *Brief of Amici Curiae*); NAHB, *The Economic Impact of Home Building in Illinois 2000-2005 Average, Income, Jobs, and Taxes Generated*. Housing Policy Department, Feb 2010; NAHB, *The Economic Impact of Home Building in Illinois 2009 Average, Income, Jobs, and Taxes Generated*. Housing Policy Department, Feb 2010 (Group Ex. 5 to Motion for Leave to File *Brief of Amici Curiae*).

Typically, new home construction contracts and remodeler's contracts contain an express warranty that provides the purchaser a warranty against all defects and other construction/workmanship issues for a set period of time; usually one year. In exchange for the express warranty and as a term of the contract, the purchaser waives all implied warranties including the implied warranty of habitability. This contractual term has been developed by this Court's rulings since 1979 and is standard in the industry so that it is conspicuous, generally highlighted and complies with the Court's decisions.

The First District Appellate Court's finding that a waiver of an implied warranty of habitability is not applicable to subsequent homeowners changes the industry standard and has a far reaching impact on builders, remodelers, subcontractors, lenders, insurers and homeowners. If left to stand, the retroactive application of the decision will result in builders leaving the industry. With a prospective application of this decision, just the cost of procuring insurance to cover this expanded liability will effect housing prices and preclude new homebuyers from finding affordable housing. The National Association of Home Builders has researched the price point for new home ownership and discovered that 8,250 Illinois families are priced out of the real estate market for every \$1,000.00 increase in housing costs.²

² Natalia S. Siniavskaia, Ph.D., *State and Metro Area House Prices; the "Priced Out" Effect* (August 1, 2014). Available at <https://www.nahb.org/en/research/housing-economics/special-studies/state-and-metro-area-house-prices-the-priced-out-effect-2014.aspx>. This figure, 8,250 households/\$1,000 increase in purchase price, is calculated by taking the total 2014 national estimate of the price out of 206,269 households for each \$1,000 increase in the home price and multiplying it by 4%, which is the percentage of households and population pursuant to the U.S. Census *QuickFacts, United States* (Illinois) (2015); Available at <http://quickfacts.census.gov/qfd/states/17000.html?cssp=SERP>, (Population Est. 2014, and Households).

Therefore, the *Amici Curiae* feel compelled to file this Brief and offer the their perspective of the ruling, its effect on the building industry, public in general and to address the historical and public policy considerations that may not be included or addressed in the parties' briefs.

FACTS

The HBAs adopt by reference the facts set forth in the Appellants' Statement of Facts.

ARGUMENT

THE APPELLATE COURT ERRED IN REWRITING THE ORIGINAL CONTRACT TO ELIMINATE THE WAIVER OF THE IMPLIED WARRANTY OF HABITABILITY

Illinois has long recognized a party's freedom and right to enter into contracts without interference from the Court. *H&M Commercial Driver Leasing, Inc. v. Fox Valley Containers, Inc.*, 209 Ill.2d 52, 57 (2004); *Progressive Universal Insurance Company of Illinois v. Liberty Mutual Fire Insurance Company*, 215 Ill.2d 121, 129, 130 (2005). The Court will not invalidate a portion of a contract unless it is clearly contrary to the constitution, the statutes or decisions of the court. *Progressive Universal Ins.*, 215 Ill.2d at 130.

A written contract is required when selling real estate. Typically on new construction, a contract has a provision for review by a licensed attorney. The contract is then negotiated and finalized. A deed is issued and recorded with the recorder of deeds office in the county the property is located. A subsequent purchaser of the property is charged with knowledge of the law and with notice of anything appearing on record,

Smith v. Grubb, 402 Ill. 451, 464, 465 (1949), and has the affirmative duty to investigate all facts that could have been discovered with the conveyance *Id.*, See also, *Provident Federal Savings & Loan Association v. Realty Centre, Ltd*, 97 Ill.2d 187, 192 (1983). An individual cannot grant and convey a greater estate than the individual owns and the excess grant is void. *Smith*, 402 Ill. At 465; *The Cadle Company II, Inc., v. Stauffenberg*, 221 Ill.App.3d 267 (3rd Dist. 1991)

Here, as the record in the Appellate Court shows, the provisions of the contract entered into between Masterklad, Inc. (“Masterklad”) and the original purchaser, Beth Lubeck (“Lubeck”) contained a waiver of implied warranty of habitability in return for an express one year limited warranty, which was not required by law. The original home buyer waived the implied warranty of habitability and no longer had the right to assert it against the Appellants. The contracted for provisions state:

“The Agreement does provide that Purchaser will receive from Seller (the ‘Warrantor’) and [*sic*] express written warranty the form of which is attached to the Agreement. The Warrantor shall comply with the provisions of the express warranty and Purchaser accepts the express warranty granted therein as a substitute for the Implied Warranty of Habitability hereby waived by Purchaser and disclaimed by Seller.”

...

“The Waiver and Disclaimer of Implied Warranty of Habitability contained here *** shall be binding upon and inure to the benefit of Seller, Purchaser and their respective successors, assigns, heirs, executors, administrators, and legal and personal representative.”

(*Fattah v. Bim*, 2015 IL App (1st) 140171, at ¶¶ 4-5)

Therefore, at the time of contract, Lubeck waived the implied warranty of habitability and had no means to convey this interest in the property, an interest she no longer held, to a third party in any subsequent sale of the property.

The record also establishes that Plaintiff, John Fattah (“Fattah”) was aware of the fact that Lubeck purchased the house new from Masterklad three years prior to his purchase. While the Appellate Court noted that the contract between Fattah and Lubeck is not of record (*Fattah*, 2015 IL App (1st) 140171, at ¶ 6), the “As Is’ Addendum Rider” was attached transferring the property to Fattah “as is.” At the time of the Fattah/Lubeck Contract, Plaintiff was placed on notice to investigate, inquire and discover if there were any implied warranties that ran with the house or whether the implied warranty was waived. The record does not show that Fattah took any such action, but in his affidavit attached to the motion for summary judgment, he stated “it did not occur to [him], and [he] did not intend, that this rider impacted any right that [he] might have against any party other than Lubeck.” (*Fattah*, 2015 IL App (1st) 140171, at ¶ 10). This does not relieve him of his knowledge of the law and his duty to investigate what he actually was purchasing.

Also in his affidavit, Fattah admitted he noticed deterioration of the brickwork on the patio and hired a building inspector to inspect the house. *Id.* The record does not contain the inspection report. Pursuant to the Home Inspector License Act (225 ILCS 441/1-5 *et seq.*) (“HILA”), the home inspector was required to be tested and licensed by the Illinois Department of Financial and Professional Regulation. Section 225 ILCS 441/1-10 defines home inspection to include “(5) foundation; . . . (7) masonry structure; or (8) any other residential real property component as established by rule.” Without the inspector’s report, it would only be speculation as to whether the inspector complied with the HILA and what his results were regarding the patio/retaining wall. It is hearsay at best to accept the unsupported statement from Fattah as to what his inspector stated.

Fattah is asking this Court to change existing law as it relates to the implied warranty of habitability and the waiver thereof, rewrite the contract between Masterklad and Lubeck and eliminate his own affirmative duty to investigate the property he is purchasing and his admitted ignorance of the law.

THE IMPLIED WARRANTY OF HABITABILITY WAS WAIVED.

The right to waive the implied warranty of habitability has been recognized by this Court since it judicially created this right in new construction contract. *Peterson v. Hubschman Construction Co.*, 76 Ill.2d 31, 43 (1979) (“Although the implied warranty of habitability is a creature of public policy, we do not consider a knowing disclaimer of the implied warranty to be against the public policy of this State.”). The Court’s reasoning for adopting the implied warranty of habitability was to address the vast changes that had taken place in the methods of constructing and marketing new homes and to avoid the harsh consequences of the doctrine of *caveat emptor* and the merger doctrine, which exists under contract law. The Court based its judicial creation in part on the Illinois Uniform Commercial Code (“UCC”), e.g. that the completed structure would be reasonably suited for the homeowner’s intended use. *Id.* 76 Ill.2d at 42. The Court used the same logic and reference to the UCC in adopting the policy that it could be waived. *Id.*

As far back as 1982, in *Redarowicz v. Ohlendorf*, 92 Ill.2d 171, 176 (1982), this Court recognized that it was foreseeable that a house will be sold more than once. For this reason, the Court found that the implied warranty of habitability did not require privity of contract and existed independently, and could be enforced within a reasonable time after the construction (the Court found one year to be such a time frame). The Court reasoned that the initial homeowner and subsequent homeowners shared the same lack of

knowledge in construction practices and the responsibility to repair structural defects if they occurred. *Id.* However, in making this determination, the *Redarowicz* Court did not address the effect of a valid waiver of the implied warranty of habitability would have on downstream purchasers of the property. The judicial concept of the implied warranty of habitability did not exist until 1979; the *Redarowicz* contract was entered into in 1976 (3 years previous); and there was no claim of waiver from the first owner to the plaintiff. Therefore, while the concept of the independent nature of the implied warranty of habitability was addressed, *Redarowicz* is distinguishable in that it did not address the effect of a valid waiver being executed by the first owner.

In order to waive the implied warranty of habitability: (a) the waiver needs to be a conspicuous provision of the contract (2) which fully disclosed the consequences of its inclusion and (3) that it was in fact the agreement of the parties. *Board of Managers of Chestnut Hills Condominium Association v. Pasquinelli, Inc.*, 354 Ill. App. 3d 749, 758 (2004); *Herlihy v. Bunbar Builders Corp.*, 92 Ill. App. 3d 310, 317; *Board of Managers of the Village Centre Condominium Association, Inc. v. Wilmette Partners*, 198 Ill. 2d 132, 141 (2001). Masterklad and Lubeck fully complied with these requirements and Lubeck signed the waiver (*Fattah*, 2015 IL App (1st) 140171, at ¶ 9) and the Appellate Court found it to be a valid waiver (*Fattah*, 2015 IL App (1st) 140171, at ¶ 28).

With the valid waiver, the implied warranty of habitability no longer vested. Lubeck received a valuable express warranty benefit for the waiver and thereafter the waived implied warranty of habitability was not part of the rights or interest Lubeck could assign, transfer or sell to Fattah. In order to have the implied warranty of habitability apply, the Court would have to rewrite the contract between Masterklad and

Lubeck, which is an impermissible judicial action. *Thompson v. Gordon*, 241 Ill.2d 428, 449 (2011)(“A court cannot alter change or modify existing terms of a contract, or add new terms or conditions which the parties do not appear to have assented.”). This would result in extending the implied warranty of habitability for a period of time that was not bargained for or contemplated by Masterklad.

The Appellate Court’s logic that since privity of contract is not necessary then the implied warranty lives on forever if the subsequent homebuyer does not know of its existence creates an unreasonable and impractical burden on builders. The Appellate Court’s decision would require for every builder to go back from the first house they built forward³; determine who owns it; determine if they intend to sell it; obtain knowledge of the prospective buyer; and advise the prospective buyer the implied warranty of habitability was waived. This will have to be done on a regular basis and would require the cooperation of each successive homebuyer until the corporation ceases operation or becomes insolvent. At that point, such obligations would also fall upon the builder’s subcontractors to carry the same burden, *Minton v. The Richards Group of Chicago*, 116 Ill. App. 3d 852 (If a general contractor becomes insolvent then the implied warranty commences anew with the subcontractor.). In addition to this newly imposed burden to check on a regular basis with the homeowners, subcontractors would be required to obtain full financial disclosure and cooperation from the builders, in order to fully investigate the solvency of the builder for whom they worked.

³ Applying this Court’s recent decision in *Henderson Square Condominium Association v. Lab Townhomes, LLC*, 2015 IL 118139 (Nov. 4, 2015), one could argue that the implied warranty would be applicable to cover latent defects even after the expiration of the four (4) year statute of limitations and (10) year statute of repose as set forth in 735 ILCS 5/13-214(a)(b).

The result of the Appellate Court's decision is to remove the long standing law that a buyer is held to know the law, and therefore has the duty to conduct a reasonable investigation regarding the property being purchased. The decision shifts the buyer's duty to the building and subcontractor. As an example taking the year 2005, with 47,705 new homes, 8-10 companies/individuals (assuming builder and their subcontractors, i.e. excavation, concrete, framing, siding, roofing, window, insulation, plumbing, electrical, drywall, flooring, painting and finishing) would have to devote resources, manpower and costs to track each such home and obtain the cooperation of each homeowner and subsequent homeowner. Even with the number of homes in 2014, 10,533, such duty is not feasible, reasonable or practical. The Appellate Court extended the implied warranty of habitability based in part on its determination it was fair to place the risk of latent defects on the builder and not the subsequent purchaser; however, the Appellate Court did not look at the unfairness of its decision shifting the burden of discovery and duty to inform all subsequent purchasers that a waiver of the implied warranty of habitability existed, rather than maintaining this duty to be on the shoulders of the subsequent purchase.

Who has the better ability to know of a subsequent sale? The subsequent purchaser.

Who has the better ability to inquire whether a waiver of implied warranty of habitability exists? The subsequent purchaser.

Who has the better ability to seek investigate the condition of the property and the status of the rights they are receiving in a transaction? The subsequent purchaser.

Therefore, in the resale situation of a home, it is fairer to maintain the duty the Courts have placed upon subsequent homebuyers to conduct a reasonable investigation, instead of shifting this duty to the builder (and subcontractors) who may have not been involved with the property for several years.⁴

The cascading effect of the Appellate Court's decision would also affect the ability of builders and subcontractors to obtain general liability and completed operations coverage insurance. With this decision, each builder/subcontractor would have to obtain coverage for all work they have done and will do for an indefinite period of time. The sheer cost to insure against such losses is immeasurable. This does not even address additional issues and costs that could arise under the Illinois Workers Compensation Act (820 ILCS 305/1 *et seq.*) and Home Repair and Remodeling Act (815 ILCS 513/1 *et seq.*) if coverage is not obtained or subsequently cancelled.

All of the forgoing costs imposed by this decision will be passed on to the consumer. The costs of housing will surely increase and eliminate thousands of Illinois families from obtaining home ownership.

CONCLUSION

The Appellants were justified in relying upon the terms of the written contract and the status of Illinois law as it related to the implied warranty of habitability and the waiver of the same. The Appellate Court does not offer any reasoning behind its deviation of existing contract law to remove the burden on prospective home purchasers

⁴ Further, the Appellate Court in adopting Fattah's statement as to condition of the patio/retaining wall and the hearsay statement from the unknown inspector removes the knowledge and duty to investigate the condition of the patio/retaining wall prior to sale. The HILA was designed to protect subsequent homebuyers by establishing uniform requirements for inspectors so as to advise homebuyers as to the condition and defects with existing houses (68 Ill. Adm. Code §§ 1410.10, *et seq.*).

to not investigate or determine what they are actually purchasing. The Appellate Court's expansion and modification of Illinois contract law and the law with respect to the application of the implied warranty of habitability imposes upon builders and subcontractors liability that was not, and is not, contemplated in the contracts they enter into and was never imagined under Illinois law. It further eliminates any responsibility on a buyer of an existing home to inspect, investigate, or even make a simple inquiry, as to whether they can rely upon any implied warranties. In fact, the decision encourages purchasers not to ask any questions but to proceed blindly in purchasing a home. The result of the Appellate Court's decision will increase the cost of each new home thereby pricing new home buyers out of the market.

WHEREFORE, the *Amici Curiae*, the Home Builders Association of Illinois, an Illinois not-for-profit corporation, Bloomington/Normal Area Home Builders Association, an Illinois not-for-profit corporation, Home Builders Association of Greater Chicago, an Illinois not-for-profit corporation, Metro Decatur Home Builders Association an Illinois not-for-profit corporation, Home Builders Association of East Central Illinois, an Illinois not-for-profit corporation, Effingham Area HBA, Northern Illinois Home Builders Association, an Illinois not-for-profit corporation, Home Builders Association of Greater Peoria, an Illinois not-for-profit corporation, Home Builders Association of the Greater Rockford Area, an Illinois not-for-profit corporation, Quad Cities Builders & Remodelers Association, Inc., an Iowa not-for-profit corporation, Home Builders Association of Quincy, an Illinois not-for-profit corporation, Home Builders Association of the Greater Southwest Illinois, an Illinois not-for-profit corporation, Southwest Suburban Home Builders Association, an Illinois not-for-profit corporation, Springfield

Area Home Builders Association, an Illinois not-for-profit corporation, National Association of Home Builders, the Illinois Chamber of Commerce, and their members pray that this Court reverse the Appellate Court and affirm the Trial Court's judgment in favor of the Appellants.

Respectfully submitted by:
Amici Curiae

By: /s/ John P. Cooney
John P. Cooney
Jeffrey D. Corso
Cooney Corso & Moynihan, LLC
1423 Centre Circle
Downers Grove IL 60515
630.675.2828
630.390.2390 (facsimile)
jcooney@ccvmlaw.com

Dated December 9, 2015

CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that this Brief of *Amici Curiae* conforms to the requirements of Illinois Supreme Court Rule 341(a) and (b). The length of the Brief, excluding the pages containing the Rule 341(d) cover, Rule 341(h)(1) Statement of Points and Authorities, Rule 341(c) Certificate of Compliance, the Certificate of Service and those matters to be appended to the Brief under Rule 342(a) is 14 pages.

/s// John P. Cooney

John P. Cooney
Cooney Corso & Moynihan, LLC
1423 Centre Circle
Downers Grove IL 60515
630.675.2828
630.390.2390 (facsimile)
jcooney@ccvmlaw.com