

Arizona court holds homeowners can recover attorneys' fees for defective construction despite failing to pay contractor's final invoice, but contractor entitled to prejudgment interest on claim for the unpaid invoice.

In *Sirrah Enterprises, LLC v. Wunderlich*, __ Ariz. ____, 1 CA-CV-15-0058 (June 16, 2016), Division 1 of the Arizona Court of Appeals upheld an award of attorneys' fees to homeowners who obtained a jury verdict on their claim against a contractor for breach of the implied warranty of workmanship and habitability based on defective basement construction. The jury also found for the contractor on its claim against the homeowners stemming from its unpaid final invoice, and the appellate court held that the contractor was entitled to prejudgment interest from the date of the jury's verdict.

The takeaway points are:

1. The successful party on a claim for breach of the implied warranty of workmanship and habitability (the theory often used to recover damages for construction defects) can recover attorneys' fees so long as there was an express contract between the parties, although attorneys' fees cannot be recovered in a claim brought by a subsequent homeowner.
2. When bringing a claim principally over an unpaid invoice, be sure to itemize and demand any extra damages sought early in the process in order to maximize prejudgment interest.

1. Attorneys' fees may be recovered by a party to a construction contract for breach of the implied warranty of workmanship.

Attorneys' fees were awarded to the homeowners under A.R.S. § 12-341.01, Arizona's statute authorizing attorneys' fees awards in contract cases, and the attorneys' fees provision in the parties' written contract. The heart of the dispute was whether the homeowners' claim arose out of their contract with the contractor, which the trial and appellate courts both answered in the affirmative. Because A.R.S. § 12-341.01 authorizes attorneys' fees awards on claims arising out of express or implied-in-fact contracts (but not for implied-in-law contracts), the homeowners' claim was one for which attorneys' fees could be awarded under the statute. The court also affirmed the trial court's finding that the homeowners were the prevailing parties based on the disparity between the damages awarded to the homeowners (\$297,782.00) and those awarded to the contractor (\$31,374.00).

The appellate court distinguished the situation in *Sirrah* from that in the recent case of *Sullivan v. Pulte Home Corp.*, 231 Ariz. 53 (App. 2012), which held that a homebuilder

that prevailed on a breach of the implied warranty claim could not recover attorneys' fees under A.R.S. § 12-341.01. The court reasoned that *Sullivan* arose out of an implied-in-law contract between the homebuilder and subsequent purchaser, whereas the parties in *Sirrah* had an express contract (that contained an implied-in-law warranty), meaning that attorneys' fees could be awarded under the statute.

2. *Prejudgment interest does not always accrue on the date an invoice becomes due.*

The appellate court awarded the contractor prejudgment interest on its claim at the contract interest rate (1.5% per month), but only from the date of the jury's verdict rather than the date of the final invoice. The court noted that while prejudgment interest "typically accrues" from the date of an unpaid invoice, the amount due the contractor on its claim was not capable of exact calculation until the verdict was rendered. The opinion is unclear on what damages the contractor sought, although it appears the contractor sought damages above and beyond the unpaid invoice amount since the jury awarded the contractor \$5,000.00 more than the unpaid invoice amount.