

Rogers v. Forest City Ruling

On Thursday, Nov. 19, 2015, the Colorado Court of Appeals issued an opinion in Rogers v. Forest City Stapleton, Inc. (Case No. 2015COA167), a ruling that may have lasting importance for developers, builders, contractors, designers, and homeowners in Colorado. The Rogers decision creates new law and standards applicable to future construction defect litigation in Colorado—and parties involved in the development, sale, and purchase of raw land in Colorado should be aware of the decision and the different standards, and risks, it establishes.

The opinion addresses the issue of whether developers who improve and sell raw land make implied warranties to homeowners and other subsequent purchasers of the land—even if those purchasers never had any contractual relationship with the developer.

The case involved a dispute between a homeowner in the Stapleton neighborhood and the master developer of the Stapleton community, Forest City. After groundwater and calcite began to leach into the homeowner's basement, he sued 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, and Forest City appealed.

The Colorado Court of Appeals, in a split decision, held that a developer in Colorado can be liable for breach of an implied warranty of suitability, but only if:

1. the developer improved the lot for a particular purpose; and
2. all subsequent purchasers, including the homeowner, relied on the developer's skill or expertise in improving the lot for that particular purpose; and
3. the lot was not suitable for the particular purpose for which the developer improved the lot and for which subsequent purchasers relied on it being suitable; and
4. that unsuitability caused the homeowner's damages.

The Court of Appeals found that the trial court did not provide this necessary instruction to the jury, and therefore reversed the judgment on implied warranty and remanded the case for retrial.

Absent an appeal to the Colorado Supreme Court, the case will be so remanded to the Denver District Court for a new trial, where the Plaintiff will be required to prove that these requirements apply in this case.

Separately, the Court held that Forest City was not liable for actions taken by a metropolitan district during construction of the roads and other civil infrastructure for the Stapleton development.

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