NO. A05-0222

State of Minnesota
In Court of Appeals

TERRY L. ITTEL AND GINA L. ITTEL,

Appellants,

v.

JEROME PIETIG AND PIETIG BROS, INC.,

Respondents,

vs.

BERGSTROM STUCCO, INC.; SCHERER BROS. LUMBER COMPANY; JAMES NOREEN, d/b/a NOREEN CONSTRUCTION; AND DAVID MOORE, d/b/a MOORE LATHING AND d/b/a MOORE STUCCO,

Respondents.

RESPONDENTS PIETIG BROS. AND JEROME PIETIG'S BRIEF AND APPENDIX

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STATEMENT OF LEGAL ISSUE

Whether a Mutually Negotiated Release and Settlement of Claims Agreement, Executed by Parties Represented by Counsel, is Valid and Enforceable under Minnesota Law When it Bars All Future Claims by the Plaintiffs Relating to the Subject Property.

Yes. The Trial Court found the mutually negotiated Release and Settlement of Claims Agreement to be valid and enforceable under Minnesota law. In refusing to adopt Appellants' interpretation of Minn. Stat. 327A.04, the Trial Court found that Minnesota has a strong public policy in favor of settlement and that Appellants' interpretation would effectively prevent parties from ever settling breach of statutory warranty claims, a result the Legislature could not have intended.

APPOSITE CASES AND STATUTES

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Minn. Stat. §327A.04
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Sorensen v. Coast-to-Coast Stores (Cent. Org.), Inc., 353 N.W. 2d 666 (Minn. Ct. App. 1984)

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STATEMENT OF THE CASE

The Appellants commenced the underlying litigation on February 11, 2004 in Hennepin County District Court, the Honorable Judge Gary Larson presiding.

Prior to this appeal and the proceedings before the Trial Court, Appellants twice sued Respondents Jerome Pietig and Pietig Bros., Inc. ("Respondent Pietig") for alleged construction defects to their home. The first lawsuit was resolved by arbitration. The second lawsuit was resolved by settlement. Both Appellants and Respondent Pietig had legal counsel during the negotiation and settlement of the second lawsuit and they signed and fully executed a Mutual Release and Settlement of all Claims agreement ("Mutual Release"). The second action was ultimately dismissed with prejudice.

The Appellant homeowners now attempt to circumvent the express and unambiguous provisions of the Mutual Release in an effort to seek further recovery from the Respondent Pietig for alleged construction defects and breach of statutory home warranties. Shortly after Appellants commenced the present lawsuit, Respondent Pietig moved for summary judgment on the grounds that the Mutual Release barred all of Appellants' claims.

In response to Respondent Pietig's Motion, Appellants argued that the Mutual Release was void because it did not comport with Minn. Stat. § 327A.04. The Trial Court disagreed, stating as follows:

> The Ittels knew of their statutory warranty rights, the Release was clear in releasing Pietig from all statutory liability, the Ittels consented, and both parties signed the Release.... The parties entered into the Release with knowledge of its ramifications and

> the intent to release one another from prior, current, and subsequent claims.... This Court will not interpret Minnesota Statutes [sic] section 327A.04 to effectively prevent parties from settling breaches of statutory warranties, as that is clearly not what the legislature intended.... [T]his Release does not fall under the section 327A.04 requirement for modification or exclusion....

The Trial Court issued its Order and Memorandum, dated December 7, 2004, granting Respondent Pietig's motion for summary judgment. By a subsequent order for judgment, entered on February 2, 2005, the Trial Court dismissed all claims against Respondent Pietig and the Third-Party Defendants ("Co-Respondents"). Appellants filed their Notice of Appeal on February 4, 2005.

STATEMENT OF FACTS

On November 30, 1999, Appellants entered into a purchase agreement with Respondent Pietig to purchase a lot and home being constructed by Respondent Pietig at 925 Bayside Lane, Minnetrista, Minnesota (the "Property"). Appellants' Appendix ("AA") 2. On February 11, 2000, the Appellants paid Respondent Pietig the full purchase price for the Property and took possession of the Property. Id.

On August 27, 2001, Appellants sued Respondent Pietig alleging that the surface drainage on the Property was impeded due to improper grading and landscaping. Their claims included: (1) breach of statutory warranty; (2) breach of express warranty; (3) breach of contract; (4) breach of implied warranty; (5) negligence; (6) intentional and negligent misrepresentation; and (7) rescission. Respondent Pietig's Appendix ("RA") 1-9. On December 13, 2001, Appellants and Respondent Pietig agreed to arbitrate their dispute and submitted the case to the American Arbitration Association. RA 10. The Arbitrator awarded Appellants the sum of $14,127.76, subject to the condition that Appellants could bring additional claims, if excavation revealed additional defects. AA 3.

On June 28, 2002, the Appellants sued Respondent Pietig again, this time in Conciliation Court. Id. In this second lawsuit, Appellants alleged that the Property's drainage tile system was defective. RA 11. Respondent Pietig retained legal counsel who removed the case to District Court. RA 13.

Upon the removal of the case to District Court, Appellants served an Amended Complaint asserting claims for (1) breach of contract, and (2) breach of the consumer fraud act. RA 15-18. Subsequent to negotiation, Appellants and Respondent Pietig reached a settlement and signed the Mutual Release. AA 15-16. Respondent Pietig signed the Mutual Release on November 1, 2002 and Appellants signed it on November 4, 2002. Id. Thereafter, Appellants' second case against Respondent Pietig was dismissed with prejudice. RA 19-20.

The Mutual Release provides, in relevant part, that upon payment by Respondent Pietig in the amount of $5,375.00, the Appellants will release and forever discharge Respondent Pietig "from any and all actions, causes of actions, claims, demands, damages, costs, or expenses of whatever kind and nature, whether known or unknown, suspected or unsuspected, which [Appellants] the Ittels now have or may have against [Respondent] Pietig." AA 15-16. The Mutual Release further references the allegations of the second lawsuit, the previous lawsuit that was arbitrated, and any and all future claims or lawsuits or any other claim that may arise or be asserted by the Appellants against Respondent Pietig. Id.

To avoid any possible confusion regarding the types of claims being released, the Mutual Release contained examples of the types of claims that the Appellants were releasing. Those claims included, but were not limited to, all claims relating to breach of contract, consumer fraud, breach of statutory warranty, breach of express warranty, breach of implied

warranty, negligence, intentional and negligent misrepresentation, rescission and each and every claim now existing or hereinafter arising which has been made or could have been made by Appellants against Respondent Pietig in relation to the claims in the lawsuit existing at that time and any and all claims relating to the Property. Id. Finally, the Mutual Release specifically states that the payment by Respondent Pietig was in full accord and satisfaction of all claims referenced in the Mutual Release. Id.

On or about February 11, 2004, Appellants sued Respondent Pietig a third time and again asserted claims for (1) breach of contract, (2) breach of warranty, and (3) breach of the consumer fraud act, all relating to the Property. AA 6-9. Specifically, Appellants alleged that Respondent Pietig failed to install kickout flashing at roof-wall terminations and that the Property failed to comply with building code requirements. Id.

Respondent Pietig denied liability and alleged that the Mutual Release precluded the Appellants from bringing the claims in the new lawsuit. Respondent Pietig then moved for summary judgment on the grounds that the Mutual Release barred all of Appellants' claims related to the Property. See AA 22. Appellants opposed Respondent Pietig's motion arguing that the Mutual Release was void because it did not comport with Minn. Stat. § 327A.04 relating to the exclusion or modification of a statutory new-home warranty. AA 24. The Trial Court disagreed with Appellants' argument and interpretation of Minn. Stat. § 327A.04 and granted Respondent Pietig's motion for summary judgment. AA 27.

ARGUMENT

I. The Trial Court Properly Decided that the Mutual Release and Settlement of All Claims Agreement is Valid and Enforceable Under Minnesota Law and is a Complete Bar to all of Appellants' claims.

A. Standard of Review.

When summary judgement is granted based on the application of a statute to undisputed facts, the result is a legal conclusion, to be reviewed *de novo*. Greuling v. Wells Fargo Home Mortgage, Inc., 690 N.W.2d 757, 759-760 (Minn. Ct. App. 2005).

B. The Trial Court Properly Enforced the Mutual Release Finding: (1) Appellants Intended to Release Respondent Pietig from all Present and Future Liability, and (2) Appellants Did Not Provide Evidence of Mutual Mistake or Allege Facts of Fraud, Wrongful Concealment, or Duress That Would Justify Invalidating the Mutual Release.

In determining whether to enforce or invalidate the Mutual Release, the Trial Court conducted a careful and thorough examination of Minnesota law governing settlement and release agreements. AA 22-23. Subsequent to this examination, the Trial Court properly enforced the Mutual Release, finding that Appellants intended to release Respondent Pietig from all statutory liability and that Appellants failed to offer evidence raising a genuine issue of material fact under principles of mutual mistake, fraud, wrongful concealment, duress or any other factors that could justify invalidating the Mutual Release. Id. at 22-23, 27.

In a desperate attempt to invalidate the Mutual Release, Appellants argued that they did not discover major structural defects until after they executed the Mutual Release. Appellants Br. 14. However, Appellants' only real argument, at best, is a unilateral mistake,

and Minnesota courts will not set aside a release on the basis of unilateral mistake unless there is evidence that the other party obtained the release by fraud, misrepresentation, or other inequitable conduct. Respondent Pietig engaged in no such conduct, so this Court should affirm the Trial Court's order and dismissal.

1. The law encourages settlement of claims and presumes settlement agreements are valid.

Minnesota law encourages settlement of disputes and generally presumes a settlement agreement is valid. Sorensen v. Coast-to-Coast Stores, (Cent. Org.), Inc., 353 N.W.2d 666, 669 (Minn. Ct. App. 1984). "A valid release is a defense to any action on the claims released." Id. "[T]he law presumes that parties to a release agreement intend what is expressed in a signed writing." Id. at 670.

Minnesota courts have typically examined the following Sorensen factors when determining a party's intent to release claims: (1) language of the release; (2) presence of legal counsel; (3) existence of fraud or misrepresentation; (4) wrongful concealment of fact or other inequitable conduct which contributes to; (4) duress; and (5) consideration. See id. at 669-70.

The Trial Court examined and properly relied on the Sorenson factors in concluding that Appellants intended to release Respondent Pietig from all statutory liability. AA 22-23. The Trial Court first construed the language of the Mutual Release which states that the Appellants discharged Respondent Pietig "from any and all actions, causes of actions, claims, demands, damages, costs, or expenses of whatever kind and nature, whether known or

unknown, suspected or unsuspected, which the [Appellants] Ittels now have or may have against [Respondent] Pietig." Id. at 23. The Trial Court found that this language was not ambiguous or confusing, stating that:

> [t]here is no question of how much liability or what liability [Respondent] Pietig was released from; the document clearly states that the [Appellants] Ittels completely discharged [Respondent] Pietig from all liability . . . [t]he parties entered into the Release with knowledge of its ramifications and the intent to release one another from prior, current, and subsequent claims.

Id. at 23; cf. Sorenson, 353 N.W.2d at 669 (holding that a release that is short and straightforward, and not mired in legal jargon, is a strong factor indicating intent.).

Furthermore, the Trial Court did not end its analysis there. In determining the Appellants' intent, the Trial Court examined factors surrounding the execution of the Mutual Release, including the fact that the parties negotiated the terms of the Mutual Release and were represented by Counsel: "[d]uring settlement negotiations, both parties were represented by counsel, and it is undisputed that the [Appellants] Ittels received $5,375.00 in consideration for releasing [Respondent] Pietig from all liability." AA 23; cf. Sorenson, 353 N.W.2d at 669 (holding that the presence of counsel during execution of the release is also a strong factor indicating intent); see also Jeffries v. Gillitzer, 225 N.W.2d 17, 20 (Minn. 1975) (holding that evidence as to the finality of a release can be conclusive when the release is executed "under circumstances evincing basic fairness when both releasor and releasee clearly indicate in the instrument an intent to release all claims for known and unknown injury.")

Here, Appellants have not proven or pointed to any facts of fraud, wrongful concealment or duress that would justify setting aside the Release. See Whitfield v. Pub. Hous. Agency of the City of St. Paul, No. Civ.03-6096 PAM/RLE, 2004 WL 2801589 (D. Minn. Dec. 7, 2004) (quoting Justine Realty Co. v. Am. Nat'l Can Co., 976 F.2d 385, 391 (8th Cir. 1992)) ("in the absence of mistake or fraud, a settlement agreement will not be lightly set aside.") On this issue, the Trial Court noted as follows: "[t]he [Appellants] Ittels have not alleged any facts of fraud, wrongful concealment, or duress. While the [Appellants] Ittels reference, in passing, a misrepresentation in their fact section, they have not cited to this Court any piece of evidence supporting the proposition that a misrepresentation makes the Release invalid." AA 23.

2. Unilateral mistake does not justify setting aside a release.

Appellants admit that they had knowledge of defects involving the drain tile at the time they signed the Mutual Release, but argue that they later discovered other alleged structural defects in the Property. Appellants' Br. 14. However, Appellants' argument that they were not aware of other defects at the time they executed the Mutual Release does not invalidate the Mutual Release.

At best, Appellants' failure to understand the scope of the Mutual Release would be considered a unilateral mistake. But a unilateral mistake as to the scope of the release will not avoid its plain language--Appellants must come forward with evidence that there was a mutual mistake regarding the intended scope of the release or that Respondents induced the mistake in some untoward way. See Schmitt-Norton Ford, Inc. v. Ford Motor Co., 524 F.

Supp. 1099, 1104 (D. Minn. 1981) (refusing to invalidate the release and stating that a "[u]nilateral mistake concerning the effect of a release is not a basis for setting it aside unless there is evidence that the other party obtained the release by fraud, misrepresentation, or other inequitable conduct."); see also Jeffries, 225 N.W.2d at 19 ("It is clear that an unknown and unexpected consequence that results from an injury that is known at the time of executing the release is not a sufficient basis for avoiding the release.").

Any attempt by Appellants to argue that the Mutual Release does not include their breach of other and unknown statutory warranty claims is without merit. Appellants' argument that other defects and damages were unforeseen is not only unconvincing, but begs the following question: if Appellants wanted to preserve allegedly unknown and unrelated claims, then why would they execute a Mutual Release that discharged Respondent Pietig from any and all actions, causes of actions, demands, damages, costs, or expenses, ***known or unknown, suspected or unsuspected,*** including breach of statutory warranty claims? If Appellants and their counsel had intended to release only specific claims and damages, then they had every opportunity to negotiate the reservation of other claims and/or expressly limit the breadth of the release at the time it was drafted or executed.[1] The mere fact that the Mutual Release arose out of a drain tile dispute does not establish that the settlement is limited to that issue. Cf. Goldberger v. Kaplan, Strangis & Kaplan, P.A., 534 N.W.2d 734,

[1] Something they had done in connection with the Appellants' first claim in arbitration.

737 (Minn. Ct. App. 1995) (indicating that the mere fact that a settlement agreement arose out of a fee dispute does not provide that the settlement is limited to that issue.).

It is undisputed that the Mutual Release at issue was drafted following settlement negotiations; Appellants were represented by Counsel; and, most notably, Appellants brought two previous construction defect claims against Respondent Pietig. RA 13-14. Subsequent to the first lawsuit, Arbitrator Jay J. Isenberg awarded the Appellants $14,127.76. Respondent Pietig paid the judgment conditioned on the Appellants' ability to bring additional claims, should the excavation reveal additional defects. AA 3. In this case, the Mutual Release did not preserve and was not conditioned on the Appellants' ability to bring additional claims. AA 15-16. Despite the fact that Appellants preserved their rights in a previous lawsuit, they did not preserve any claims this time around. Id. The Appellants and Respondent Pietig did not limit the scope of Mutual Release because they intended to forever terminate their differences relating to the Property. And, "[w]hen parties intend that their differences be terminated, the law must provide them with complete assurance that the matter is final." Jeffries, 225 N.W.2d at 20.

For this Court to set aside a good faith settlement as sought by the Appellants would, at best, "be unjust to the litigants whose reliance on such settlements should be encouraged, [and] be a disservice to the dedicated efforts of trial courts to hear and determine the ever-increasing number of cases on jury calendars." Beach v. Anderson, 417 N.W.2d 709, 712 (Minn. Ct. App. 1988) (quoting Eggleston v. Keller Drug Co., 120 N.W.2d 305, 307 (Minn. 1963)).

C. The Trial Court Properly Decided that the Mutual Release and Settlement of All Claims Agreement Does Not Fall Under the Minn. Stat. § 327A.04 Requirements for Modification or Exclusion of Statutory Home Warranties.

Because the valid Mutual Release is fatal to Appellants' claims, they next argue that the Mutual Release is rendered void because it does not comport with the Minn. Stat. § 327A.04 requirements for exclusion or modification of a statutory new-home warranty. AA 24. Minn. Stat. § 327A.04, subd. 1, states that "....the provisions of sections 327A.01 to 327A.07 cannot be waived or modified by contract or otherwise" and any agreement that attempts to do so is void. Subdivision 2 provides:

> [a]t any time after a contract for the sale of a dwelling is entered into by and between a vendor and a vendee . . . any of the statutory warranties provided for in section 327A.02 may be excluded or modified only by a written instrument, printed in boldface type of a minimum size of ten points, which is signed by the vendee or the owner and which sets forth in detail the warranty involved, the consent of the vendee or the owner, and the terms of the new agreement continued in writing. No exclusion or modification shall be effective unless the vendor . . . provides substitute express warranties offering substantially the same protections to the vender or the owner as the statutory warranties set forth in 327A.02.

1. Appellants' suggested interpretation of Minn. Stat. § 327A.04 would effectively abrogate parties' ability to settle statutory warranty claims.

The Trial Court found that, "[o]n its face, section 327A.04, subdivision 2 *purports* to apply any time after contract for sale of a dwelling is entered into." AA 24 (emphasis added). The Trial Court recognized that Minnesota not only has a strong public policy in favor of settlement but also has a strong public policy of protecting new home buyers and that the

"two public policies collide head on in this case." Id. The Trial Court reasoned:

> [a]bsent any case law, it is this Court's position that the parties' ability to settle cases is the stronger public policy. This Court cannot imagine that the Minnesota legislature intended section 327A.04 to apply to a settlement and release between two parties. If the statutory requirement to recite a similar warranty applied to settlements, plaintiffs would *never* be able to release a defendant from future liability - which would eliminate the parties' incentive to settle. In fact, if settlement and release of statutory warranty claims was not allowed, it would disrupt the entire judicial process by allowing subsequent claims to be brought by parties who have previously settled their suits. This could not have possibly been the legislature's intent.

Id. at 24-25.

Under Appellants' theory, any settlement involving a breach of statutory warranty claim is only valid so long as the vendor provides a substitute warranty. Appellants' Br. 5-8. Appellants argue that in order for the Mutual Release at issue to have been a valid release of their statutory warranty claims, Respondent Pietig must have provided substitute warranties so that the Appellants would have a remedy for future, unknown, home construction claims. Id. at 6-7. Appellants attempt, but fail, to create a flaw in the Trial Court's reasoning by suggesting that this is not a head-on collision between a policy in favor of settlement and the policies articulated in Minn. Stat. § 327A.04:

> The parties are free to settle claims arising out of house construction disputes, including statutory home warranty claims. The only limitation is that, with respect to future abridgements of the statutory home warranty, a substitute home warranty must be provided. This is a slight accommodation, and allows the two "strong public policies" to co-exist without an unreasonable conflict or burden on the Courts or parties.

Appellants' Br. 9.

As the Trial Court correctly recognized, Appellants' theory defies logic. There is nothing minimal or "slight" about applying the substitute warranty provisions found in Minn. Stat. § 327A.04 to a settlement and release agreement. A settlement agreement that would require the settling builder or contractor to provide a substitute warranty offering substantially the same protection for future claims and damages would effectively allow a homeowner to sue a builder, recover settlement monies, execute a release, and then immediately sue the builder again for the same alleged defects.

Appellants attempt to avoid the legal effect of the Mutual Release by distinguishing between an alleged "minor" drain tile issue and an alleged "major" structural defect. Appellants' argument is cleverly cloaked in a comparison between apples and oranges:

> Appellants' [sic] received $5,375.00 for a relatively minor drain tile issue and signed a general release, not anticipating that, a year later, major structural defects would be discovered. When these major structural defects were discovered, the repairs cost over ten times the cost of the drain tile settlement amount. There is no party to this lawsuit who has alleged that, when they signed the Drain Tile Agreement, Appellant's [sic] could have or should have foreseen the later discovery of these major structural defects. For precisely this reason, Minn. Stat. § 327A.04 directs that the remaining years of Appellants' statutory warranties were not waived by the Drain Tile Agreement, because no substitute warranty covering major structural defects was included.

Appellants' Br. 6-7. However, Appellants argument falls flat when conducting an "apples to apples" comparison. Under Appellants' own reasoning, even the settlement of the "drain tile" issue would be void because it did include a substitute warranty for "drain tile".

To further illustrate the absurdity of Appellants' reasoning, one need only examine the circumstances of the case at bar. Even if Appellants and Respondent Pietig desired to settle the matter on appeal and intended to forever buy their peace, they could not do so. Applying Appellants' interpretation of the statute, Respondent Pietig would then have to provide a substitute warranty offering substantially similar protections as the statutory home warranties in order for the Mutual Release to be valid. Even if Respondent Pietig paid Appellants to forever settle this claim on appeal, the Appellants arguably could still bring suit against Respondent Pietig again under the substitute warranty that Appellants argue must be issued. Appellants' attempt to avoid the effect of the Mutual Release by distinguishing between a "minor" warranty claim and a "major" warranty claim, misses the mark.

In a final attempt to invalidate the Mutual Release, Appellants misplace their reliance on the 1967 Age Discrimination in Employment Act and Minnesota Human Rights Act. Id. at 10. Those statutes address the waiver or release of claims arising out of distinct, future tortious events in circumstances entirely inapposite. For instance, under the Age Discrimination in Employment Act, if a claimant resolves a lawsuit for age discrimination, the claimant can resolve all claims, known and unknown, arising out of the subject age discrimination. However, the resolution of prior age discrimination claims would not preclude a person from bringing claims if he/she is discriminated against in the future. This example illustrates that the Age Discrimination in Employment Act is merely preserving claims for future distinct, tortious events, not claims arising out

of the past tortious events. The reasoning which applies to preclude a waiver of future claims under the Age Discrimination in Employment Act simply does not apply in the residential home construction context. The claims relating to construction defects and/or moisture intrusion arise out of the construction of the home, a past event, and can therefore can be resolved in their entirety.

2. The Trial Court properly considered legislative intent when it refused to apply the requirements of Minn. Stat. § 327A.04, subd. 2, to the Mutual Release.

Appellants cite numerous Minnesota cases for the proposition that, where the intention of the Legislature is clearly manifested by unambiguous language, no construction of a statute is necessary or permitted. See Appellants' Br. 11; see, e.g., LaChapelle v. Mitten, 607 N.W.2d 151, 159 (Minn. Ct. App. 2000); Brula v. St. Louis County, 587 N.W.2d 859, 862 (Minn. App. 1999) (quoting Tereault v. Palmer, 413 N.W.2d 283, 286 (Minn. Ct. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."). Appellants' reasoning would apply if the Trial Court had been called on to construe a plain and unambiguous statute. See Minn. Stat. § 645.16 ("[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.") However, the language of Minn. Stat. § 327A. 04 applies to modification and exclusion of statutory home warranties but is silent on the issue of settlement of breach of warranty claims. Thus, the Trial Court properly considered legislative intent, the purpose of the statute, and the consequences of Appellants' statutory interpretation when it refused to apply the

requirements of Minn. Stat. § 327A.04, subd. 2, to the Mutual Release. See Minn. Stat. § 645.16 ("[w]hen the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters: [t]he occasion and necessity for the law...[t]he mischief to be remedied... and the consequences of a particular interpretation....).

In considering these factors, the Trial Court examined Kurle v. Ryland Group, Inc., No. A03-1089, 2004 WL 1049039 (Minn. Ct. App. May 5, 2004) and determined that the purpose of the statute was to protect home purchasers who may not be aware of the statutory warranties available and may be manipulated into giving them up:

> the requirements laid out by the statute are meant "to make certain that the (1) the seller informs the buyer of the nature of the statutory warranties to which the buyer is entitled, (2) the seller makes clear to the buyer in what particulars the seller proposes to modify the statutory warranties, (3) the buyer expresses consent to the modification, and (4) the buyer signs a written instrument containing all of the foregoing elements."

AA 26 (citing Kurle, No. A03-1089, 2004 WL 1049039 at 4.).

The Trial Court found that those concerns were not as critical at the time of a settlement as at the time of closing:

> At the time of settlement, parties are aware of their legal remedies --as, in this case, the Ittels had already brought legal claims for relief -- and are not in the same vulnerable position as prospective buyers presented with multiple documents at closing. The Ittels knew of their statutory warranty rights, the Release was clear in releasing Pietig from all statutory liability, the Ittels consented, and both parties signed the Release . . . [T]he policy interests of fully informing home-buyers were fulfilled when they entered into the Release. This is true of settlement agreements in general. For this reason, the legislature must have meant to protect the new-home buyer *before* the

> breach of the warranty and not during a settlement of a breach of the warranty.

AA 26-27.

The Trial Court recognized that practical consequences of adopting Appellants' interpretation would "effectively prevent parties from settling breaches of statutory warranties...." AA 27. These consequences are not only substantial, but unjust and a consequence the legislature could not have intended. "Unjust and indefensible results of a statute are to be avoided by construction, if possible." Pomeroy v. Nat'l City Co., 296 N.W. 513, 515 (Minn. 1941). "The construction of a statute must be reasonable and practical. 'Broad and practical considerations should control.'" Zochrison v. Redemption Gold Corp., 274 N.W. 536, 540 (Minn. 1937) (quoting 6 DUNNELL MINN. DIG. (2d ed. & Supps. 1932, 1934). The Trial Court's analysis and interpretation of Minn. Stat. 327A.04, Subd. 2, was reasonable, practical and correct.

CONCLUSION

The Trial Court properly enforced the Mutual Release, finding that Appellants intended to release Respondents from all statutory liability and that Appellants failed to offer evidence raising a genuine issue of material fact under principles of mutual mistake, fraud, wrongful concealment, duress or any other factors that would justify invalidating the Mutual Release. The Trial Court properly refused to adopt Appellants' interpretation of Minn. Stat. § 327A.04 to invalidate the Release because such an interpretation would effectively prevent parties from ever settling breaches of statutory warranty claims, a result the Legislature could

not have intended. For these reasons and the reasons stated in the foregoing brief, Respondent Pietig respectfully requests that this Court affirm the Trial Court's judgment against Appellants.

Dated: April 4, 2005

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this Brief complies with the word count and type face requirements of Minn. R. Civ. App. 132.01. The number of words in the words in the Brief is 4,927. The word processing software used to prepare the Brief was WordPerfect.

Dated: April 4, 2005

Amy M. Coniaris

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).