

NO. A04-599

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State of Minnesota  
**In Supreme Court**

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Arturo Camacho and Kristi Camacho,  
*Appellants,*

vs.

Todd and Leiser Homes,  
*Respondent.*

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**APPELLANTS' BRIEF AND APPENDIX**

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## LEGAL ISSUE

*Can a corporate builder of residential homes unilaterally shorten or eliminate the legislatively mandated ten-year construction warranties in Minn. Stat. § 327A.01 et seq. by dissolving its corporation pursuant to Minn. Stat. § 302A.7291?*

The district court denied defendant-builder's motion to dismiss and concluded that the dissolution of builder's corporation pursuant to statute did not bar plaintiff-homeowners' claim for breach of statutory warranty.

The Court of Appeals reversed, holding that homeowners' action was barred because it was not commenced within two years of notice of corporate dissolution.

### Authority:

Minn. Stat. § 302A.7291

Minn. Stat. §§ 327A.02-.03

*State v. Phillip Morris, Inc.*, 551 N.W.2d 490 (Minn. 1996)

*Koes v. Advanced Design, Inc.*, 636 N.W.2d 352 (Minn. Ct. App. 2001)

## STATEMENT OF THE CASE AND THE FACTS

This is a claim for breach of statutory new-home warranties. The purely legal issue presented by this appeal is whether the general corporate-dissolution statute controls over the specific home-warranty statute.

### **A. Statement of the Case**

On September 23, 2003, Appellants Arturo and Kristi Camacho (“the Camachos”) commenced this lawsuit against Respondent Todd and Leiser Homes, asserting claims for negligence and breach of the statutory new-home warranty provided by Minn. Stat. § 327A.01 *et seq.* Respondent Todd and Leiser Homes (“Contractor”) brought a motion to dismiss, supported by matters outside of the pleadings, arguing that the claims were time barred because they were not brought within two years after Contractor’s corporate dissolution in 1999.

The Ramsey County District Court, the Honorable Gary Bastian presiding, denied the motion to dismiss on February 5, 2004, concluding that the new-home-warranty statute controlled. (A.68.) Contractor filed its Notice of Appeal on April 6, 2004. (A.71.) The Minnesota Court of Appeals reversed the district court in an opinion filed on December 21, 2004. (A.73.) This Court granted the Camachos’ Petition for Further Review on March 15, 2005. (A.81.)

### **B. Statement of Facts**

In 1993, the Contractor acted as general contractor for the construction of a residential home located at 300 Lady Slipper in Vadnais Heights, Minnesota (“Home”). (A.2-A.3.) The Contractor was required by Minn. Stat. Ch. 327A to warrant that the

home would be free from certain defects for at least 10 years. Minn. Stat. § 327A.02, subd. 1(a), (c). Furthermore, the Contractor was required to obtain liability insurance coverage under the state licensing requirements in effect at the time. The Home was first certified for occupancy in the late fall of 1993. (A.3.)

On April 29, 1997, less than four years after building the Home, the Contractor filed a Notice of Intent to Dissolve with the Minnesota Secretary of State, pursuant to Minn. Stat. § 302A.7291, subd. 3(a). (A.25.) In the course of its dissolution, the Contractor chose not to provide notice to any creditors or claimants. (A.27.) The Contractor filed its Articles of Dissolution on May 6, 1999, representing that all known debts, obligations, and liabilities of the corporation had been paid and discharged. (*Id.*) The Minnesota Secretary of State issued the Contractor a Certificate of Dissolution on May 6, 1999. (A.26.)

The Camachos purchased the Home from its original owners on July 5, 1999. (A.40-A.45.) In August 2003, in connection with a pending sale of the property, the Home was inspected. (A.46-A.49.) The inspection revealed that the Home had experienced significant moisture intrusion that resulted in deterioration and rot of sheathing, studs and other structural components of the Home. (A.48-A.49.) Further investigation revealed that the damage was caused by the Contractor's faulty workmanship and failure to follow building standards. (A.46-A.49.) The Camachos spent more than \$200,000 repairing the Home. (A.50-A.51.)

After determining that the Contractor had shut down its business, the Camachos served a Summons and Complaint on September 23, 2003, alleging claims of negligence

and breach of the statutory warranties afforded them pursuant to Minn. Stat. § 327A.02. (A.1-A.8.) On October 13, 2003, the Contractor served its Answer (A.18-A.24), alleging as an affirmative defense that the Camachos' claims were barred as a result of its dissolution. (A.21.) The Contractor attached the Notice of Intent to Dissolve, Articles of Dissolution, and Certificate of Dissolution as exhibits to its Answer. (A.21, A.25-A.27.)

Upon learning of the Contractor's affirmative defense, the Camachos immediately served discovery requests directly related to issues surrounding the Contractor's dissolution. No responses were ever served.

The Contractor filed a motion to dismiss, which it supported with an affidavit and documents outside of the pleadings. (A.15-A.17.) The Contractor's motion asserted a statute-of-limitations defense--namely that the two-year time limitation in the dissolution statute, Minn. Stat. § 302A.7291, subd. 3, barred the Camachos' claims. (A.9-A.14.)

In response, the Camachos pointed out the conflict between the corporate-dissolution statute and the home-warranty statute and argued that the statutory warranties codified at Minn. Stat. Ch. 327A are substantive rights that must survive corporate dissolution. (A.30-A.37.) The Camachos further noted several unresolved fact questions, including whether and to what extent the Contractor had actual knowledge of potential claims at the time it attempted to dissolve. (A.34.)

The district court denied the Contractor's motion (A.69-A.69), ruling that the specificity of the statutory warranties codified at Minn. Stat. § 327A.01 *et seq.* controlled over the general corporate dissolution statutes in Minn. Stat. § 302A.72 *et seq.* (*Id.*)

Having denied the Contractor's motion on that basis, the court did not reach the other defenses to dismissal and/or summary judgment raised by the Camachos.

The district court did not certify that any of the questions presented in the Contractor's motion or the court's decision were important or doubtful under Minn. R. Civ. App. P. 103.03(i). Curiously, however, the district court directed the clerk to "enter judgment accordingly." Based on this language, the Contractor immediately appealed the denial of its motion.

Treating the Contractor's motion as a motion to dismiss and not as a motion for summary judgment, the Court of Appeals reversed the district court. (A.73.) The appellate court held that the Contractor's dissolution effectively terminated its warranty obligations. The Camachos sought further review on the issue of whether a corporate builder of residential homes can unilaterally shorten or eliminate the legislatively mandated ten-year construction warranties contained in Minn. Stat. § 327A.01 *et seq.* by dissolving its corporation pursuant to Minn. Stat. § 302A.7291. This Court granted review. (A. 82.)

## ARGUMENT

### **I. STANDARD OF REVIEW**

Whether the Camachos' statutory-warranty claims under Minn. Stat. §327A.01 *et seq.* survive the Contractor's dissolution under Minn. Stat. § 302A.7291 is a pure question of law. Questions of law are reviewed de novo. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984); *see also State v. Azure*, 621 N.W. 2d 721, 723 (Minn. 2001) (holding that statutory interpretation is a question of law which the Court reviews de novo).

### **II. CORPORATE DISSOLUTION DOES NOT NULLIFY A HOMEOWNER'S STATUTORY REMEDIES FOR BREACH OF THE STATUTORY WARRANTY.**

The Court of Appeals' decision is based on a legal error and should be reversed. Contrary to the appellate court's suggestion that chapter 327A merely provides a procedural time limitation on warranty claims, these legislatively created, consumer-protection warranties afford homeowners an affirmative, substantive right to sue upon a breach; there are no exceptions in the statute for dissolved contractors.

Admittedly, this creates an apparent conflict with the corporate dissolution statute (which likewise does not have an exception for statutory-warranty claims). Based on its misinterpretation of chapter 327A, however, the Court of Appeals failed to analyze the conflict between the two statutes. A proper legal analysis reveals that, to the extent the two statutes cannot be reconciled, the canons of statutory construction and public policy dictate that the specific, consumer-protection home-warranty statute must prevail over the general corporate-dissolution statute.

Alternatively, to the extent this Court finds the conflict between the statutes can be reconciled, it should give effect to both the general provisions of the corporate-dissolution statute and the specific provisions of the home-warranty statute by finding that the Camachos may proceed with their claim to the extent that the Contractor secured its warranty obligations by procuring insurance, the proceeds of which would remain payable notwithstanding the dissolution.

**A. Minn. Stat. § 327A.05 gives the Camachos an Affirmative, Substantive Right to Assert a Cause of Action Against the Contractor for Breach of Statutory Warranty.**

The Court of Appeals failed to recognize that chapter 327A affords homeowners substantive rights. The Court of Appeals' entire analysis of Minn. Stat. § 327A.01 *et seq.* is limited to two sentences. The court's misperception of the statute is evident in its limited analysis where it states that "the home-construction-warranty statute provides a time gradation for bringing breach-of-home-warranty actions." (A.79.) Based on its assumption that the statutory warranty was nothing more than a "time gradation" for bringing a claim, the court concluded "the district court essentially interpreted the procedural time limitation in the home-warranty provisions to create affirmative rights that would supersede the corporate-dissolution statutes. We find no authority for this extension of substantive rights." (A.80.) The appellate court's opinion was based on the premise that the statutory warranties are simply procedural time limitations and do not extend substantive rights to homeowners. This premise is false.

Chapter 327A home warranties are not simply procedural time limitations; rather, they provide homeowners with substantive rights. In this case, chapter 327A required the

Contractor to warrant that the Camachos' home would be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards for the first year after construction and be free from major construction defects for 10 years after construction.<sup>1</sup> Minn. Stat. § 327A.02, subd. 1(a), (c). The remedies section of the statute provides that “a vendee [homeowner] shall have a cause of action against the vendor [contractor] for damages arising out of the breach, or for specific performance.” Minn. Stat. § 327A.05 (emphasis added). The Legislature’s use of the phrase “shall have a cause of action” unmistakably creates a substantive right to sue in the event the warranty is breached. And the fact that the Legislature saw fit to allow the unusual remedy of specific performance further reflects its intent to give homeowners affirmative rights that the common law does not provide.

Notwithstanding its opinion below, the Court of Appeals has previously recognized the substantive nature of the statutory warranties. *See Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 356 (Minn. Ct. App. 2001) (stating that the Legislature addressed consumer complaints arising from new-home construction in a comprehensive way “when it adopted a new body of consumer-protection law largely focused on home warranties,” which are codified in chapter 327A). The Legislature certainly did not adopt

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<sup>1</sup> Homeowners such as the Camachos may avail themselves of these warranties at any time, so long as they can establish that the defects existed within the respective warranty periods. *See* Minn. Stat. § 327A.02. In other words, owners can bring a claim under the one-year “workmanship warranty” nine years after construction as long as they can establish the defect existed within the first year after construction. *See id.*, subd. 1(a). This Court recently held that owners may bring claims under the ten-year “structural warranty” set forth in section 327A.02, subdivision 1(c), even where the structural damage has occurred over time due to water intrusion. *Vlahos v. R & I Constr. of Bloomington, Inc.*, 676 N.W. 2d 672, 678 (Minn. 2004). There is no dispute that the defects at issue here existed within the respective warranty periods.

an entire new body of law simply to provide a procedural “time gradation” for bringing a claim, as the panel below suggests.

This Court has also recognized that the chapter 327A warranties extend substantive rights to homeowners. In *Vlahos v. R & I Construction of Bloomington, Inc.*, 676 N.W.2d 672, 678 (Minn. 2004), the Court stated that the statutory warranties “function much like the warranties of future performance we addressed in [*Church of the Nativity of Our Lord v. WatPro, Inc.*, 491 N.W.2d 1 (Minn. 1992)],” which arose out of an express warranty promising to maintain a roof in a watertight condition for a period of 10 years. Like warranties of future performance, the *Vlahos* court held, the statutory home warranty provides a “guarantee” that a home will be free from defects during the warranty period. 676 N.W.2d at 678. There can be no doubt that a warranty of future performance, such as those provided in chapter 327A, affords the warranty-holder a substantive right to bring an action to enforce the warranty.

This is precisely the type of claim being made by the Camachos in this case. Indeed, the Camachos have provided the Contractor with an expert report which states that the Home has suffered major construction defects due to water intrusion, which was caused by the Contractor’s faulty workmanship and failure to follow applicable building codes. (A.46-A.49.) The defects at issue here--failure to properly apply the stucco, failure to properly install and flash the windows, etc.--existed from the very time the Home was built. Accordingly, the Contractor cannot dispute that the defects existed within the warranty periods. The Camachos therefore have an affirmative, substantive right to avail themselves of the statutory remedies in Minn. Stat. § 327A.05.

The only limitations placed on that right by the Legislature are the exclusions set forth in Minn. Stat. §327A.03, which obviate a contractor's warranty obligations. There are 16 different exclusions. The exclusions do not include corporate dissolution. See Minn. Stat. § 327A.03. When a statute contains certain express exceptions, it is construed to exclude all others. Minn. Stat. § 645.19; *Maytag Co. v. Comm'r of Taxation*, 218 Minn. 460, 463-64, 17 N.W.2d 37, 40 (1944). Absent such exclusion, remedies for violation of the statutory warranties are mandatory. Minn. Stat. § 327A.05.

The Legislature did not provide that the remedies were inapplicable against corporations that have dissolved. The warranty language is mandatory. Applied to this case, the law is clear: the Camachos have a substantive right to assert a cause of action against the Contractor for breach of the statutory warranties irrespective of the Contractor's dissolution.

**B. The Canons of Statutory Construction and Public Policy Dictate that the Consumer Protection Home Warranty Statute Must Prevail Over the Corporate Dissolution Statute.**

There is a conflict between the affirmative rights of homeowners to sue contractors for breach of chapter 327A warranties for at least 10 years after construction and the general prohibition of filing lawsuits against dissolved corporations more than two years after dissolution under chapter 302A. Based on its erroneous finding that the statutory warranties did not extend substantive rights to homeowners, the Court of Appeals failed even to address this conflict, much less resolve it. This Court should find that the canons of statutory construction and public policy require the corporate

dissolution provisions to yield to a homeowner's right to bring an action for breach of the statutory warranties under these limited circumstances.

The conflict between the two statutes appears to be irreconcilable. Under these circumstances, the canons of statutory construction dictate that the specific home warranty provisions control over the general provisions of the corporate dissolution law. Accordingly, the Camachos must be allowed to proceed with their claims. Furthermore, it would violate public policy to allow contractors to shirk their State-mandated warranty obligations simply by dissolving their companies.

Minn. Stat. § 645.26 provides specific guidance for the Court's interpretation of two conflicting statutory provisions:

When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

Where, as here, the conflict between two statutory provisions is irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision.

Minn. Stat. § 645.26. In other words, the more narrow law governs over the more general law. *State v. Kalvig*, 296 Minn. 395, 397-98, 209 N.W.2d 678, 680 (1973).

The district court properly concluded that the corporate dissolution statutes are of general applicability. (A.69.) The dissolution statutes apply indiscriminately to all different types of corporations involved in every type of business. Similarly, the

dissolution statutes appear to apply to all claims and causes of action that may be brought against a dissolving corporation.

The statutory construction warranties, by contrast, apply only to one type of corporation in a very specific business--corporations that construct residential dwellings for purposes of sale. *See* Minn. Stat. § 327A.01. Likewise, the statutory warranties deal with a particular set of consumer rights, with specific exclusions, and mandatory remedies. There are 16 specific exclusions to the statutory warranties contained in Minn. Stat. § 327A.03, and corporate dissolution is not among them.

Public policy further supports the district court's ruling. The home warranty protections afforded in Minn. Stat. Ch. 327A are labeled "Consumer Protection" statutes, and are aimed at protecting a specific class of consumers: homeowners. *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 356 (Minn. Ct. App. 2001). Such statutes "are generally very broadly construed to enhance consumer protection." *State v. Phillip Morris, Inc.*, 551 N.W.2d 490, 496 (Minn. 1996). The Legislature intends to favor public interest over private business interests. Minn. Stat. § 645.17(5).

Moreover, the home-warranty statute protects more than just individual homeowners--it protects the public interest. The dissolution statute, on the other hand, is intended to protect private corporations. In the conflict between the statutory home warranties and the corporate-dissolution statute, deference should be given to the law that is designed to protect the public interest.

Here, public policy is served by holding that statutory-warranty claims survive dissolution by a corporate builder. The State of Minnesota requires that builders such as

the Contractor provide homeowners with warranties that extend at least 10 years. The statute of limitations for claims under the statutory warranties is two years from a homeowner's discovery of a contractor's breach of the warranty. Minn. Stat. § 541.051. By enacting a statute of limitations that begins to run upon discovery of breach, the Legislature has explicitly recognized that, in many cases, defects caused by faulty workmanship or failure to follow building codes are not immediately discoverable. For this reason, the State has mandated that homes must be warranted for at least 10 years.

Further, this Court recently held that the statute of limitations on warranty claims like this does not even begin to run, until "the homeowner discovers, or should have discovered, the builder's refusal or inability to ensure the home is free from major construction defects." *Vlahos*, 676 N.W.2d at 678 (emphasis added). Since a breach includes a builder's inability to make good on its warranty obligations, it follows that homeowners must have a right to bring an action under chapter 327A against a builder that has already gone out of business.

To allow a builder of residential homes to escape its obligations under these warranties simply by dissolving would render the warranties meaningless. The Legislature does not intend a result that is absurd or impossible to execute. Minn. Stat. § 645.17. That is exactly what would happen if this Court adopted the holding below. If claims under the statutory home warranties were barred by corporate dissolution, a builder could form a new corporation for the construction of each home and then simply dissolve that corporation after completion of construction, secure in the knowledge that any latent defects would not appear until long after the corporation had officially

dissolved. This would limit a new homeowner's warranty protection to as little as 90 days (depending on if the builder gave notice of the dissolution). The Legislature could not have intended to create such an absurd and unjust situation.

The absurdity of allowing builders to unilaterally reduce or eliminate their warranty obligations by dissolving is further demonstrated by the fact that only corporate builders would be afforded this protection. Contractors doing business as sole proprietorships or partnerships cannot "dissolve" under chapter 302A. In other words, under the Court of Appeals' decision, the rights of a homeowner to sue a builder for breach of warranty depend in part on the type of company that built the home. Corporate builders could terminate their statutory-warranty obligations without notice to anyone within two years of building (by dissolving), while a builder organized as a sole proprietorship or partnership would be required to stand behind its warranties for the full 10 years. Certainly the Legislature did not intend to protect only those consumers who hired an unincorporated builder. *See* Minn. Stat. § 645.16(6) (requiring attention to the consequences of statutory interpretation).

Rather, by mandating that all builders provide certain statutory warranties, and by making the warranties transferable and non-waivable, the Legislature has made clear its intent to provide warranty protection for every new home for a period of at least 10 years. It would undermine the Legislature's intent, and offend public policy, to allow a builder unilaterally to revoke the substantive rights granted to homeowners by the State simply by filing a piece of paper with the Secretary of State's office.

**C. In the alternative, allowing the Camachos' lawsuit to proceed only to the extent the Contractor has insurance coverage would resolve the conflict between the statutory warranty and the corporate-dissolution statute.**

While the two statutes are seemingly in conflict, they can be construed to give effect to both by permitting the Camachos to pursue their claims against the Contractor to the extent that it provided for its warranty obligations by procuring insurance. At the time the Contractor constructed the Home it was required, as a licensed home construction contractor, to procure and maintain insurance to cover the precise claims that are raised in this lawsuit. Minn. Stat. § 326.89, subd. 2.<sup>2</sup> To the extent the Contractor complied with that obligation and obtained insurance coverage for damages caused by its work, or that of its subcontractors, that coverage is applicable despite the fact that the Contractor is no longer in business.

Allowing the Camachos to pursue their claims to the extent that the Contractor has insurance coverage would not be akin to a direct action, as the Court of Appeals

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<sup>2</sup> Contrary to the statement of the Court of Appeals (A.81), immediately after receiving the Contractor's Answer, and well before the Contractor filed its motion to dismiss, the Camachos served discovery requests seeking the relevant insurance policy or policies that are affording the Contractor with a defense to this case and that would presumably afford coverage for the damages suffered by the Camachos. The Contractor failed to respond to the requests. The language of the policies, and caselaw interpretation of such policy language, will likely provide that the policies remain in force even where the insured (i.e., the Contractor) ceases doing business, as long as the occurrence that triggers coverage occurred during the respective policy period. The Contractor's failure to provide the insurance information supports the Camachos' argument in the court below, and reasserted here, that this entire appeal is premature. (Resp. Br. to Minn. Ct. App. at 8-12.)

suggested. (A.81.) The case remains one against the Contractor. The insurer does not become a named party.

Put simply, this is the only way to give effect to the intent of the warranty and dissolution statutes at the same time. The statutory home warranty is designed to protect owners of new homes from having to bear the costs of correcting a builder's faulty workmanship or repairing major construction defects. The corporate dissolution statute is intended to permit a corporation and its shareholders to cease doing business and avoid having to pay for the liabilities of the corporation in perpetuity. By allowing a homeowner to proceed with a statutory-warranty claim only to the extent that the builder had secured its warranty obligations with insurance coverage, the purposes of both statutes are met. The homeowners have the opportunity to recover the costs of correcting defects that would be covered by the warranties, while the dissolved builders would not have "personal" responsibility to pay any judgment that may be obtained.

Reading the statutes in this manner is also consistent with the requirement that builders must carry liability insurance to be licensed. After all, residential home construction is a tough business. Builders go out of business all the time. No doubt this is one reason the State requires builders to be insured--to provide coverage to homeowners in the event that the builder has gone out of business or is not financially able to meet its warranty obligations. It is not the least bit unfair that insurance companies be responsible for the legal obligations of their insureds. They were, after all, paid premiums in exchange for taking on precisely that responsibility.

There are other circumstances in which the law allows individuals to make claims based on the defendant's procurement of insurance. For instance, a municipality's procurement of liability insurance constitutes a waiver of the limits on governmental liability set forth in Minn. Stat. § 466.04 if the coverage exceeds those limits and covers the claim. Minn. Stat. § 466.06. The policy behind section 466.06--compensating the injured party if coverage is available--thus trumps the policy of limiting municipal liability. Here, the Camachos are injured, insurance coverage exists, and the Camachos' lawsuit should be allowed to proceed. The corporate dissolution statute, much like the statutory cap on governmental liability, should not bar the Camachos' statutory-warranty claim.

Finally, allowing the Camachos to proceed with their claims to the extent the Contractor is insured is also in accord with the recent decision of the Court of Appeals holding that where an insurance policy provides coverage for money the insured is "legally obligated to pay as damages," litigation is not a prerequisite for coverage to be triggered; rather, the coverage obligation may flow from the insured's contractual obligation. *Wanzek Constr., Inc. v. Employers Ins. of Wausau*, 667 N.W.2d 473, 477 (Minn. Ct. App. 2003). The same analysis should apply where a builder-insured's obligation flows from a statutory warranty rather than a contract.

To adopt the Contractor's argument and hold that homeowners like the Camachos should not be able to recover under the terms of the insurance policies that the corporation was required to procure to protect them--simply because the corporation has filed some paperwork with the State--would be an absurd result. Such a result was

clearly not intended by the Legislature. See Minn. Stat. § 645.17(1); *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997) (stating that if the language of the statute reasonably permits an alternative construction, the court should construe it to avoid an absurd result). Accordingly, the Court should hold that the Camachos' statutory warranty claims may proceed to the extent that the Contractor had insurance coverage.

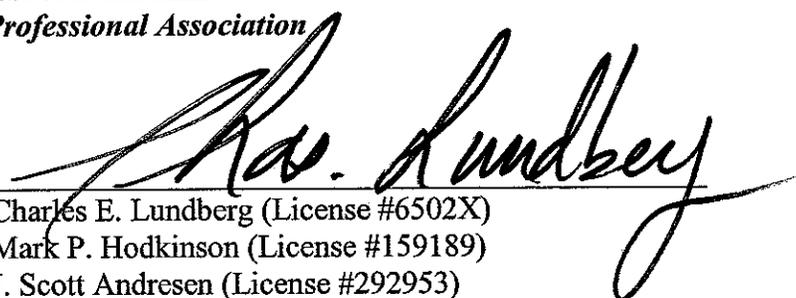
### CONCLUSION

For the foregoing reasons, the Camachos respectfully request that the Court of Appeals' decision be reversed and the case be remanded so that they may proceed with their cause of action against the Contractor for breach of its statutory warranties.

Respectfully submitted,

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Dated: 4/14/05

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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).